FREEDOM ESCROW
Telephone (949) 644-3939 • 2 Civic Plaza • Suite 200 • Newport Beach, CA 92660 • FAX (949) 644-3938
www.freedomescrow.com

# SUPPLEMENTAL ESCROW INSTRUCTIONS

TO: **Freedom Escrow**

Date: April [redacted], 2001
Escrow Officer: JUDY [redacted]
Escrow Number: 3536[redacted]

The following instructions shall be deemed supplemental to those escrow instructions contained in that certain RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS dated April 4, 2001, with an Acceptance date of April [redacted], 2001, together with those certain Counter Offer(s) thereto, by and between [redacted], Seller herein, and **JPF V, LLC**, Buyer herein, (hereafter, collectively, the "Agreement").

**Terms of Transaction**

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| Buyer will deposit, prior to close of escrow, the sum of | $ | 1,200,000.00 |
| Buyer to obtain a New 1st Trust Deed loan in the amount of | $ | 1,000,000.00 |
| **To Complete the Total Consideration of** | $ | 2,200,000.00 |

**See complete legal description attached hereto and made a part hereof as Exhibit "A".**

COMMONLY KNOWN AS: [redacted] **DRIVE, CORONA DEL MAR (AREA), CA** [redacted]

SHOWING TITLE VESTED IN: **JPF V, LLC, A DELAWARE LIMITED LIABILITY COMPANY**

**CONTINGENCY DATES:** The following contingency dates have been agreed upon between Buyer and Seller:

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| Seller to order all reports | April [redacted], 2001 |
| Prequalification letter | April [redacted], 2001 |
| Appraisal contingency | UNTIL LOAN HAS FUNDED |
| Date to complete all inspections | April [redacted], 2001 |
| Buyer approval of all reports | 5 DAYS AFTER RECEIPT |
| Loan contingency | UNTIL LOAN HAS FUNDED |
| **CLOSE OF ESCROW** | **April [redacted], 2001** |

**CITY INSPECTION:** SELLER herein agrees to provide Buyer with a City of Newport Beach Residential Property Report, together with an inspection of subject property and clearance showing corrective work completed, if any, for Buyer's approval prior to the dated of close of escrow. Escrow holder's only concern with said report is to reimburse the party, if any, presenting the paid receipt from the City of Newport Beach from proceeds due Seller as of the date of close of escrow.

**HOME WARRANTY PLAN:** Buyer and Seller elect NOT to obtain a one-year Home Protection Plan covering the property.

**FIRE INSURANCE:** Buyer shall furnish new insurance acceptable to lender and authorizes payment of premium for same when bill is submitted to escrow. In the event an association insurance covers the dwelling, escrow holder is authorized and instructed to obtain a Certificate of Insurance of the Blanket Fire Insurance policy covering the subject property.

**AUTHORIZATION TO PAY EXPENSES:** Buyer and Seller are aware that Freedom Escrow may incur certain expenses during the course of processing this escrow which must be paid prior to the close of escrow. Such costs include, but are not limited to, association transfer fee and document fees, messenger fees, overnight mail service and city building reports, if applicable. Escrow Holder is authorized and instructed to release funds for payment of such costs, prior to the close of escrow, from funds deposited into escrow by Buyer. At close of escrow, Escrow Holder is authorized to charge the appropriate party for costs incurred. Should this escrow cancel Buyer and Seller are aware that monies disbursed are not refundable. Buyer and Seller agree to release escrow holder from any and all liability in connection with complying with this instruction.

**DEPOSIT DEEMS APPROVAL:** All conditions of this escrow will be deemed to be satisfied or waived by Buyer upon

EXHIBIT 7 PROVING ERIN COLLINS LIED TO THE USDOJ ABOUT GREENBERG

EXHIBIT 8  COLLINS LIES ABOUT HUNDREDS OF HOURS AND THOUSANDS OF EXPENSES CHARGED TO BEVERLY HILLS BUSINESS MAN IN OBTAINING A $300 MILLION BLIPS DEDUCTION FOR HIM WITH THE HELP OF HER GOOD FRIEND MARY TARPLEY FROM THE IRS

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| Collins,Erin M. | US147 | 02/15/02 | 02/08/02 | 2 | 1619363 | CA | California | 10509597 |
| Collins,Erin M. | US147 | 02/15/02 | 02/12/02 | 2 | 1619363 | CA | California | 10509597 |
| Collins,Erin M. | US147 | 02/15/02 | 02/13/02 | 2 | 1619363 | CA | California | 10509597 |
| Collins,Erin M. | US147 | 02/15/02 | 02/15/02 | 2 | 1619363 | CA | California | 10509597 |
| Collins,Erin M. | US147 | 02/28/02 | 02/19/02 | 3 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 02/28/02 | 02/21/02 | 1 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 02/28/02 | 02/26/02 | 2 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 02/28/02 | 02/27/02 | 4 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 02/28/02 | 02/28/02 | 3 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 03/15/02 | 03/04/02 | 1 | 1619363 | CA | California | 10562847 |
| Collins,Erin M. | US147 | 03/15/02 | 03/05/02 | 1 | 1619363 | CA | California | 10562847 |

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| Collins,Erin M. | US147 | 03/31/02 | 03/18/02 | 1 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 04/30/02 | 04/29/02 | 2 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 04/30/02 | 04/30/02 | 3 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 05/15/02 | 05/03/02 | 2 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 05/31/02 | 05/21/02 | 2 | 1619363 | CA | California | 10562847 |
| Collins,Erin M. | US147 | 05/31/02 | 05/23/02 | 2 | 1619363 | CA | California | 10562847 |

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| Collins,Erin M. | US147 | 06/15/02 | 06/06/02 | 0.5 | 1619363 | LX | Los Angeles | 10609317 |
| Collins,Erin M. | US147 | 06/15/02 | 06/07/02 | 2.5 | 1619363 | LX | Los Angeles | 10609317 |

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| Collins,Erin M. | US147 | 06/15/02 | 06/12/02 | 1 | 1619363 | LX | Los Angeles | 10609317 |

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| Collins,Erin M. | US147 | 07/15/02 | 07/10/02 | 1 | 1619363 | LX | Los Angeles | 10534566 |
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| Collins,Erin M. | US147 | 07/15/02 | 07/11/02 | 1 | 1619363 | LX | Los Angeles | 10534566 |
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| Collins,Erin M. | US147 | 07/15/02 | 07/12/02 | 8 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 07/31/02 | 07/16/02 | 1.5 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 07/31/02 | 07/17/02 | 1.5 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 07/31/02 | 07/22/02 | 2 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 08/15/02 | 08/12/02 | 3 | 1619363 | LX | Los Angeles | 10534566 |
| Collins,Erin M. | US147 | 08/15/02 | 08/13/02 | 1.5 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 08/15/02 | 08/14/02 | 1.5 | 1619363 | LX | Los Angeles | 10534566 |

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| Collins,Erin M. | US147 | 10/31/02 | 10/24/02 | 1 | 1619363 | CA | California | 10562847 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10630869 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10633875 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10609463 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10609603 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10620350 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10620362 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10620395 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10629685 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10608424 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10608448 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10609456 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10564270 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10564303 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10564307 |

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| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10564312 |
| Collins,Erin M. | US147 | 12/15/02 | 12/03/02 | 0.5 | 1619363 | CA | California | 10564340 |
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| Collins,Erin M. | US147 | 02/28/03 | 02/20/03 | 1 | 1619363 | CA | California | 10633875 |
| Collins,Erin M. | US147 | 02/28/03 | 02/21/03 | 4 | 1619363 | CA | California | 10633875 |
| Collins,Erin M. | US147 | 02/28/03 | 02/24/03 | 3.5 | 1619363 | CA | California | 10633875 |

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| Collins,Erin M. | US147 | 02/28/03 | 02/26/03 | 0.5 | 1619363 | CA | California | 10633875 |
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| Collins,Erin M. | US147 | 02/28/03 | 02/27/03 | 1 | 1619363 | CA | California | 10633875 |
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| Collins,Erin M. | US147 | 03/15/03 | 03/03/03 | 1.5 | 1619363 | CA | California | 10633875 |
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| Collins,Erin M. | US147 | 03/15/03 | 03/12/03 | 2 | 1619363 | CA | California | 10633875 |
| Collins,Erin M. | US147 | 03/15/03 | 03/13/03 | 8 | 1619363 | LX | Los Angeles | 10564343 |
| Collins,Erin M. | US147 | 03/31/03 | 03/20/03 | 2 | 1619363 | CA | California | 10730783 |

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| Collins,Erin M. | US147 | 04/30/03 | 04/17/03 | 4 | 1619363 | CA | California | 10633888 |

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| Collins,Erin M. | US147 | 05/31/03 | 05/19/03 | 2.5 | 1619363 | CA | California | 10633888 |
| Collins,Erin M. | US147 | 05/31/03 | 05/20/03 | 1.5 | 1619363 | CA | California | 10633888 |

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| Collins,Erin M. | US147 | 06/15/03 | 06/13/03 | 1 | 1619363 | CA | California | 10633888 |

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| Collins,Erin M. | US147 | 09/15/03 | 09/03/03 | 2 | 1619363 | LX | Los Angeles | 10730783 |
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| Collins,Erin M. | US147 | 09/15/03 | 09/05/03 | 1 | 1619363 | LX | Los Angeles | 10730783 |
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| RITCHIE CONSULTING | HASTING PFP 2001 | EXT | -MAY WANT TO MOVE TO ROBIN"S CONTRACT discussion on disclosure & upcoming IRS audit |
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| RITCHIE CONSULTING | HASTING PFP 2001 | EXT | -Review of TEFRA material/ e-mail to gregg - |
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| RITCHIE CONSULTING | HASTING PFP 2001 | EXT | -Review of discloure documents & discussions about IRS agent |
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| RITCHIE CONSULTING | HASTING PFP 2001 | EXT | - Discussions about closing agreements |
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| P C G INC | GARY WINNICK | EXT | -Draft of closing agreement |
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| P C G INC | GARY WINNICK | EXT | - Discussions with Gregg |
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| P C G INC | GARY WINNICK | EXT | -Revised closing agreement - discussion with Gregg & Mark, discussion with Bill Quealy and Ron Buch |
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| P C G INC | GARY WINNICK | EXT | -Meeting with Gregg & Mark |
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| RITCHIE CONSULTING | BWRM INVESTMENTS, LLC | EXT | - Discussions with Gregg and Mark - review of draft closing agreement |
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| RITCHIE CONSULTING | BWRM INVESTMENTS, LLC | EXT | - Discussion with Gregg about other client closing agreement |
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| P C G INC | GARY WINNICK | EXT | -Checking on status of examination, discussion with Hutch |

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| P C G INC | GARY WINNICK | EXT | -revised the closing agreement spoke with Gregg Ritchie about upcoming IRS meeting |

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| P C G INC | GARY WINNICK | EXT | -Pre-meeting with Gregg Meeting with IRS agent & Marilyn Devin re: closing agreement |
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| P C G INC | GARY WINNICK | EXT | -discussions with Gregg, & Marilyn re: Mary Tapley's request for Counsel memorandum approving the closing agreements |
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| RITCHIE CONSULTING | BWRM INVESTMENTS, LLC | EXT | -Ritchie - disucssions with Ken Jones, Bill Quealy & Paul Robeck on the 906 and the Service's available options and expectations |
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| RITCHIE CONSULTING | BWRM INVESTMENTS, LLC | EXT | - Discussions with Gregg, GW and thier attorney re: options and IRS possible approaches |
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| PACIFIC CAPITAL GROUP INC | SALT REFUNDS AND RULINGS | EXT | |

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| P C G INC | GARY WINNICK | EXT | -Meeting with Gregg Ritchie on closing agreement - denial of misrepresentation re: closing agreement, calls with Gry W. & attorneys |
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| P C G INC | GARY WINNICK | EXT | -Meeting with Gregg Ritchie on closing agreement - denial of misrepresentation re: closing agreement, calls with Gry W. & attorneys |
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| P C G INC | GARY WINNICK | EXT | -Meeting with Gregg Ritchie on closing agreement - denial of misrepresentation re: closing agreement, calls with Gry W. & attorneys |
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| P C G INC | GARY WINNICK | EXT | - discussions with Ron Rosen & Gregg Ritchie 1.5 re: CLOSING AGREEMENT STATUS |
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| P C G INC | GARY WINNICK | EXT | - Discussion with Gregg & Robin re: irs 98 exam - state exam of gkw & Rex 1.5 hr |
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| P C G INC | GARY WINNICK | EXT | -Calls from Florida re: IRS new notices and what effect if any they have on closing agreement |
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| P C G INC | GARY WINNICK | EXT | -2 hours - discussions with Ron Rosen about Closing Agreement 1 hour - summarized conversation with Gregg & 98 year |
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| P C G INC | GARY WINNICK | EXT | - Discussion with Ron Rosen and Gregg Ritchie about restricted consent and 1998 |
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| P C G INC | GARY WINNICK | EXT | - Discussions with Gregg Ritchie and Ron Rosen about 98 statute and possible concession of the case |

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| RITCHIE CONSULTING | BWRM INVESTMENTS, LLC | EXT | -1 hr discussion with Gregg re: 98 year and the impact of the 97 NOL |

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| PRESIDIO ADVISORS LLC | ANNE BARNETT - IRS EXAM | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| P C G INC | WINNICK IRS EXAM | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | A&G INVESTMENTS - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | DANIEL STEPHENSON - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | STEPHEN RADER - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | MICHAEL CARTER - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | RICHARD HECKMAN - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | JAMES MCCLOSKEY - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | RONALD BEATON - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | B&B FINANCIAL - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | ALLEN STEINER - IRS AUDIT | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | JOHNSON FTB | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | MOFFETT FTB | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | MOLER FTB | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |

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| PRESIDIO ADVISORS LLC | BARNETT FTB | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
| PRESIDIO ADVISORS LLC | DAY, ROLAND IRS | EXT | - Discussions with IRS manager Robert Gee about Presidio's decision not to extend the statute of limitations for the funds. Issue about our client receiving a FPAA verses having our client assume the role of TMP and agree to extend the statute in an e |
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| P C G INC | WINNICK IRS EXAM | EXT | - Discussions with Kate Ankaney and Gregg Ritchie regarding statute extension |
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| P C G INC | WINNICK IRS EXAM | EXT | |
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| P C G INC | WINNICK IRS EXAM | EXT | - Confernce call with Fred Goldberg, Gregg, and Gary |
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| P C G INC | WINNICK IRS EXAM | EXT | - Confernce call with gregg, gary , and fred goldberg |
| COMPANY OF THE PACIFIC INC | MONTY ERWIN ESTATE | EXT | |
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| P C G INC | PCG IRS EXAM | EXT | |

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| P C G INC | PCG IRS EXAM | EXT | - Discussion with Gregg R. about FTB outstandin IDR - re: opinion information, tax adivce and review of files in LA |

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| P C G INC | COMPLIANCE | EXT | - Discussion with Greg re: 1997 Flip transaction and impact on 1998 NOL carryforward. Discussion on the statute of limiation for S- Corp, TEFRA v. non-Tefra and what is the correct entity keeping the statute open for FTB and impact on its statutes |
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| P C G INC | COMPLIANCE | EXT | - Discussion with DOug Bramhall about state statutes and consequences to 1997 and 1998 years |
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| P C G INC | COMPLIANCE | EXT | -Meeting with Greg. Meeting with the FTB to discuss FTB examination |
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EXHIBIT 9 DENNIS MALLOY OF KPMG LIES TO THE USDOJ ABOUT GREENBERG AND FILES

**Internal Revenue Service**
**Criminal Investigation**

# Memorandum of Interview

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**In Re:** Philip Wiesner et al

**Location:** United States Attorney's Office
One St. Andrew's Plaza
New York, NY 10007

**Investigation #:** 130430132
**Date:** June 16, 2004
**Time:** 2:40PM-3:40PM
**Participant(s):** DENNIS MALLOY, Witness
George Ellard, Attorney
Kevin Downing, SAUSA, DOJ, Criminal Tax
Bryan K. Thiel, Special Agent

At the commencement of the interview, the above referenced government attorney and the special agent identified themselves to DENNIS MALLOY and his attorney, George Ellard, from the law firm of LeBoeuf, Lamb, Greene & MacRae. SAUSA Downing explained to MALLOY the proffer agreement. MALLOY stated he understood the proffer agreement and provided the following information:

**Background**

1. In October of 2000 MALLOY became the Professional Practice Partner in Los Angles replacing Tim O'Brien. O'Brien was asked to retire. MALLOY's background is tax and specializes in Japanese Clients. His duties included evaluating new clients, reviewing contingent fee engagements, and SEC matters. Once a year he over sees the Quality Performance Review in Los Angles. One engagement from a partner and manager is selected for review to ensure they are in compliance with KPMG's Tax Service Manual.

2. The Quality Performance Review's are done yearly with the first two years reviewed by a local partner and ever third year is reviewed by a non-local partner. The review is done and then destroyed. If there are problems, there is a form for making suggestions to the board or changes are made to the file. When the review is completed, the report is destroyed. A summary report is maintained.

3. There are approximately 20 to 30 partners in Los Angles. Mike Burke was the Area Tax Managing Partner over the West Coast which is based in Los Angles. This was prior to Richard Smith taking over the position.

4. Two weeks prior to MALLOY coming in for the proffer, he told Mike Burke, a KPMG Partner in Los Angeles, that he was going to New York to speak with the United States Attorney's Office (USAO). MALLOY was telling Burke that he did not know if he should get an attorney. Burke told him to get an attorney. At this time, Burke said we don't think we have a David Greenberg problem; Greenberg would be mad. Furthermore, General Counsel Luna told MALLOY he would be interviewed by the USAO. MALLOY stated Greenberg has a temper; a volatile man, Burke would agree. MALLOY does not have serious concerns about his safety in regards to Greenberg.

**<u>David Greenberg Background</u>**

5. David Greenberg was originally with KPMG in approximately 1980 through 1990 when he left to either Arthur Anderson or Deloitte & Touche; eventually, Greenberg worked for both Arthur Anderson and Deloitte & Touche after leaving KPMG in 1990. In 1998 or 1999 Greenberg was hired back by KPMG.

6. MALLOY did not want KPMG to re-hire Greenberg. He was not the type of guy you want at the firm (questionable ethics). When Greenberg first left KPMG in 1990 he threatened the firm with litigation and then when he left Deloitte & Touche he threatened them with litigation. Greenberg was not happy with the firm and his client's back in 1990. From MALLOY's understanding Greenberg left Deloitte & Touche because they would no longer sell the type of products Greenberg developed.

7. Another partner by the name of Bryan Isic did not want Greenberg hired back; however, Rick Rosenthal and Richard Smith made a decision to bring back a group of guys which included David Greenberg. Rosenthal and Smith approved Greenberg's compensation.

8. It was understood this group of guys including Greenberg were going to be coming in with a product. What ever they were going to sell had to be approved by Washington National Tax (WNT), before they could start with the firm. In 1998 to 1999 there was a shift in KPMG marketing strategies. Greenberg did regular tax compliance work for KPMG as well.

9. On one occasion, Greenberg explained a tax gain mitigation product to one of MALLOY's clients. The client did not do the transaction. The strategy was referred to as a "Digital Option". The client was a Japanese internet company with a large gain. The strategy consisted of buying a forward position in the YEN. A partnership created for the transaction would be dissolved causing the liability to go away. The strategy had the potential for a small gain and a large tax loss. MALLOY did not know if this product was approved by Washington National Tax.

10. MALLOY realized Greenberg was a generating a lot of money for the firm. There was a spreadsheet that tracked each partners business. MALLOY does not recall specifically if Greenberg's clients were listed.

11. Greenberg worked with the following individuals; Andrew Gatman, Manager; Suzan Black, Senior Manager; Jeff Bergman, Partner; Dale Alfonso, Partner; Mark Hutchison, Partner; and two secretaries. Alfonso reviewed David Greenberg on a yearly basis.

**David Greenberg Review**

12. DeLap received an anonymous fax about strategies Greenberg was selling. MALLOY speculates it came from either Michael Hamersley or Edmond Grigorian.

13. Larry DeLap asked MALLOY to review engagements of David Greenberg. On June 4, 2002 MALLOY received an email from DeLap asking MALLOY to review Greenberg's transactions. MALLOY recalls receiving a phone call from DeLap prior to receiving the email. There had been rumors that KPMG Partners had done deals with Greenberg and they wanted to make sure they had a list to be sent to the IRS.

14. This was not a standard review, but MALLOY was asked because he was the Professional Practice Partner. In addition, Larry DeLap thought this was a sensitive issue. Overall, David Greenberg was not real cooperative in the review.

15. MALLOY showed Greenberg the email he had received from DeLap about what they wanted to look at in regards to Greenberg's clients. MALLOY showed Greenberg a revenue report which listed clients. MALLOY took notes on the report as Greenberg explained each of the client's. MALLOY asked for all files on the sheet relating to tax strategies as identified on the spreadsheet. Greenberg told MALLOY the files were not in his Los Angeles office and it would take a day for Greenberg to get the files.

16. The focus of MALLOY's review was based on the outline in Larry DeLap's email.

17. In the report prepared by MALLOY, it was noted that the firm Lee, Goddard and Duffy received a large fee. Bill Goddard developed the transaction, so he received a portion of the fee. The firm of Lee, Goddard and Duffy (Bill Goddard was the Partner) was the firm Greenberg worked with on the redemption notice letter.

18. MALLOY reviewed the files of Greenberg to ensure each client file contained and engagement letter, opinion letter and back ground information on the client. The opinion letters were the same and some times the files included only a draft of the opinion letter, without a partner's signature. Greenberg would not sign off on the opinion letter until the client said okay.

19. Once the review was completed of Greenberg by MALLOY, the review was sent

to DeLap. In June of 2002, MALLOY went to Greenberg's office after hours to make copies of the "Digital Option" files and sent them to DeLap. In January or February of 2003, Greenberg resigned with a sixth month notice. In March of 2003, MALLOY went to get the files from Greenberg's office; however, they were gone. Only a few of Greenberg's personal records were in the file.

20. If MALLOY knew what Greenberg was doing, he would have made sure the transactions were approved by Washington National Tax; in addition, if the fees exceeded $1,000,000, this would require the transaction to be approved. At the time, MALLOY did not know about the $1,000,000 requirement. Greenberg was probably aware of the requirements as he was part of Stratecon. From 1998 or 1999 through 2002 Greenberg generated a lot of revenue for the firm, which was not approved by WNT. MALLOY heard that Greenberg got an initial nod from Richard Smith. When guys like Greenberg come on board with KPMG, they know they written approval for these transactions is required.

21. One of the checks in the Quality Performance Review would is to look in the file to see if the transaction was approved by WNT. MALLOY is not sure how Greenberg slipped by the reviews. MALLOY speculates O'Brien may have known about Greenberg's activities.

22. **Email from Burke dated June 4, 2002** – This related to an improper revenue accrual of $900,000. This was determined based on a review performed by Mike Burke. It was identified as revenue that was booked, but was not going to be collected. Mike Burke was just qualifying what he new. The engagement letter issued to Jim Duty in Charlotte, relates to Rosenthal taking Greenberg to the Carolinas for a transaction. This is Burke saying this was the only deal Greenberg did on his watch.

23. **Email from DeLap dated June 5, 2002** – DeLap wanted to confirm the deal was not going to be done. SAUSA asked MALLOY does he think this is tax advice or the marketing of a tax product, MALLOY responded this is David's way of doing things. Whatever Greenberg was doing, someone in the firm had to know. Rosenthal would have to know as he was 2nd in command of the Tax Department and now the CFO of the firm.

24. **Email from Burke dated June 12, 2002** – Burke was asking the status of MALLOY's review of Greenberg and MALLOY responded he was working on it.

25. **Email from Black dated June 12, 2002** – This was an email from Suzanne Black notifying MALLOY the files were in David Greenberg's credenza in three-ring binders.

26. **Email from DeLap dated June 18, 2002** – David Greenberg went back to the client telling them we can not charge the fee as KPMG is not issuing the opinion.

27. **Email from Burke date June 23, 2002** – Email relating to the report that was

sent to DeLap.

28. **<u>Ten Boxes bates KPMGZ01070001 through KPMGZ01160001</u>** – MALLOY has really never seen these records before.

Bryan K. Thiel
Special Agent

I prepared this memorandum on July 14, 2004 after refreshing my memory from notes made during and immediately after the interview with DENNIS MALLOY.

Bryan K. Thiel
Special Agent

EXHIBIT 10 SAMPLE OF GREENBERG FILES REVIEWED BY MALLOY

| 5 | A: Eng Client Name | B: Eng Cli# | C: Eng Name | D: Eng# | E: Engagement Partner | F: Eng Manager | G: Tax Mng Dir | H: Eng BU | I: Bus# | J: Eng Proc Descr | K: Prd | L: Code | M: Eng Service Code | N: Bus | O: Eng ERP | P: FYTD Chgd Hrs | Q: FY01 Net Eng Revenue | R: FYTD_Standard_Eng_Revenue | S: FYTD_Total_Discount | T: FYTD_Realization_Percent | U: Calc Rlz Pct |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12233 | SOUTHWEST WATER COMP | 60000963 | TAX CONSULTING | 10262843 | McCrimlisk,George H | Lee,Anita | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 20100 | General - Corporate Tax | C | 65 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12234 | SOUTHWEST WATER COMP | 60000963 | TAX CONSULTING | 10282319 | McCrimlisk,George H | Yip,Darrell S | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 20100 | General - Corporate Tax | C | 250 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12235 | SOUTHWEST WATER COMP | 60000963 | TAX CONSULTING | 10314262 | McCrimlisk,George H | Yip,Darrell S | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 20100 | General - Corporate Tax | C | 0 | 0 | -540 | 0 | -540 | 0 | 0.0 |
| 12236 | SOUTHWEST WATER COMP | 60000963 | TAX RETURN PREP | 10099098 | McCrimlisk,George H | Lee,Anita | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 120 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12237 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10356316 | McCrimlisk,George H | Seizmann,Zachary V. | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | L | 66 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12238 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10282477 | McCrimlisk,George H | Lee,Anita | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 82 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12239 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10330095 | McCrimlisk,George H | Yip,Darrell S | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 59 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12240 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10392534 | McCrimlisk,George H | Seizmann,Zachary V. | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | L | 73 | 16.7 | 3,080 | 4,197 | -1,117 | 73.39 | 73.4 |
| 12241 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10341230 | McCrimlisk,George H | Yip,Darrell S | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 0 | 0 | -506 | 0 | -506 | 0 | 0.0 |
| 12242 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10282841 | McCrimlisk,George H | Lee,Anita | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 60 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12243 | SOUTHWEST WATER COMP | 60000963 | TAX RETURNS | 10302066 | McCrimlisk,George H | Yip,Darrell S | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 22100 | Compliance - Corporate | C | 19 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12244 | **SOUTHWEST WATER COMPANY (INC) Total** | | | | | | | | | | | | | | | 94.3 | 17,147 | 28,320 | -11,173 | 210.78 | 60.5 |
| 12245 | SPATIALIGHT, INC | 60060179 | PAYROLL CONSULTING | 10316016 | Svoboda,Michael J. | Rocha,Oscar | #EMPTY | Los Angeles | US147 | SALT Income Franch | 200563 | 2433A | SALT - ET Key Client Cor | C | 70 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12246 | **SPATIALIGHT, INC. Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12247 | SPECIAL DEVICES INC | 60003727 | TAX CONSULTING | 10270638 | Grigorian,Edmond | Grigorian,Edmond | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12248 | SPECIAL DEVICES INC | 60003727 | TAX CONSULTING | 10171921 | Grigorian,Edmond | Grigorian,Edmond | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12249 | SPECIAL DEVICES INC | 60003727 | TAX PROVISIONS | 10286403 | Grigorian,Edmond | Grigorian,Edmond | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 75 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12250 | SPECIAL DEVICES INC | 60003727 | FORMS 5500 | 10244918 | Rosen,Seth M | Rottbaum,David | #EMPTY | Los Angeles | US147 | C&B | 200256 | 20200 | FTP C&B Compensation | C | 80 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12251 | **SPECIAL DEVICES INC Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12252 | SPECIALIZED DIRECT RESP | 60060168 | TAX CONSULTING | 10074989 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 | 27104 | CCS (Virtual Strat) | O | 100 | 3 | 251,875 | 1,875 | 250,000 | 13433.33 | 13,433 |
| 12253 | **SPECIALIZED DIRECT RESPONSE, INC. Total** | | | | | | | | | | | | | | | 3 | 251,875 | 1,875 | 250,000 | 13433.33 | 13,433 |
| 12254 | SPECIALTY MERCHANDISIN | 60009097 | TAX COMPLIANCE COR | 10233820 | Sasaki,Carl H | Beddeo,Walter R | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 66 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12255 | **SPECIALTY MERCHANDISING CORP Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12256 | SPECTRUM COMMUNICATI | 60068155 | CONSULTING | 10440008 | McCrimlisk,George H | Hammett,Robert L | #EMPTY | Los Angeles | US147 | Personal Financial Pl | 200556 | 20100 | General - Corporate Tax | C | 0 | 0 | -44 | 0 | -44 | 0 | 0.0 |
| 12257 | **SPECTRUM COMMUNICATIONS CABLING SERVICES Total** | | | | | | | | | | | | | | | 0 | -44 | 0 | -44 | 0 | 0.0 |
| 12258 | SPEY PHARMACEUTICALS I | 60042160 | TAX CONSULTING | 10118578 | Employee,Inactive | Employee,Inactive | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12259 | **SPEY PHARMACEUTICALS INC Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12260 | SPILSBURY, JERRY | 60063524 | TAX MINIMIZATION | 10277799 | Affonso,Dale A. | Coquillard,Christine M. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22200 | Compliance - Individual | C | 250 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12261 | SPILSBURY, JERRY | 60063524 | TAX CONSULTING | 10383380 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12262 | SPILSBURY, JERRY | 60063524 | TAX CONSULTING | 10387653 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12263 | SPILSBURY, JERRY | 60063524 | TAX MINIMIZATION | 10277784 | Greenberg,David B. | Gantman,Andrew L | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 | 27104 | CCS (Virtual Strat) | C | 250 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12264 | **SPILSBURY, JERRY Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12265 | SPORTS CLUB COMPANY I | 60033374 | 1999 COMPLIANCE | 10317829 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 56 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12266 | SPORTS CLUB COMPANY I | 60033374 | 1999 COMPLIANCE, PAI | 10396975 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 0 | 22.6 | -659 | 5,725 | -6,384 | -11.51 | -11.5 |
| 12267 | SPORTS CLUB COMPANY I | 60033374 | 2000 TAX COMPLIANCE | 10466127 | Morris,Craig S | Nagle,John W | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | O | 51 | 204.2 | 34,167 | 66,994 | -32,827 | 51 | 51.0 |
| 12268 | SPORTS CLUB COMPANY I | 60033374 | TAX COMPLIANCE | 10203372 | Morris,Craig S | Nagle,John W | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 50 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12269 | SPORTS CLUB COMPANY I | 60033374 | TAX COMPLIANCE | 10274113 | Morris,Craig S | Nagle,John W | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 70 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12270 | SPORTS CLUB COMPANY I | 60033374 | TAX COMPLIANCE 1999 | 10298341 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 65 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12271 | SPORTS CLUB COMPANY I | 60033374 | TAX COMPLIANCE 2000 | 10389244 | Morris,Craig S | Nagle,John W | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 75 | 56 | 13,146 | 17,528 | -4,382 | 75 | 75.0 |
| 12272 | SPORTS CLUB COMPANY I | 60033374 | TAX RETURN PART 3 | 10385215 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 54 | -19.5 | -8,174 | -4,588 | -4,411 | 196.14 | 196.1 |
| 12273 | SPORTS CLUB COMPANY I | 60033374 | TAX RETURNS 1999 | 10339051 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 67 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12274 | SPORTS CLUB COMPANY I | 60033374 | TAX RETURNS, PART 2 | 10374467 | Morris,Craig S | Rode,Keith E | Rode,Keith E | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 51 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12275 | SPORTS CLUB COMPANY I | 60033374 | SAT CONSULTING | 10268490 | Morris,Jeffery L | Norton,James S. | #EMPTY | Los Angeles | US147 | SALT Income Franch | 200563 | 2423A | SALT - SAT Key Client Co | C | 67 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12276 | **SPORTS CLUB COMPANY INC, THE Total** | | | | | | | | | | | | | | | 263.3 | 38,480 | 85,659 | -48,004 | 310.63 | 44.9 |
| 12277 | SPORTS SHINKO (USA) CO | 60032828 | PAYROLL CONSULTING | 10253228 | Svoboda,Michael J. | Nouchi Ogata,Michelle K | #EMPTY | Honolulu | US112 | SALT Income Franch | 200563 | 2433C | SALT - ET Refunds & Rul | C | 61 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12278 | SPORTS SHINKO (USA) CO | 60032828 | SALT - ET REFUNDS & I | 10406299 | Svoboda,Michael J. | Nouchi Ogata,Michelle K | #EMPTY | Honolulu | US112 | SALT Income Franch | 200563 | 2433C | SALT - ET Refunds & Rul | C | 88 | 4 | 886 | 1,000 | -114 | 88.6 | 88.6 |
| 12279 | SPORTS SHINKO (USA) CO | 60032828 | KAKEGHI KINAHITA | 10446168 | Wilcox,Ronald C | Kalahira,Naoko | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22200 | Compliance - Individual | O | 61 | 19 | 3,628 | 5,948 | -2,320 | 61 | 61.0 |
| 12280 | **SPORTS SHINKO (USA) CO LTD Total** | | | | | | | | | | | | | | | 23 | 4,514 | 6,948 | -2,434 | 149.6 | 65.0 |
| 12281 | SPORTS SHINKO CO LTD | 60024028 | REAL PROPERTY TAX A | 10151602 | Sawai,Stanley M | Employee,Inactive | #EMPTY | Honolulu | US112 | SALT Income Franch | 200563 | 2443Q | SALT - Real Prop Tax Tra | C | 73 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12282 | SPORTS SHINKO CO LTD | 60024028 | GET/TAT REVIEW | 10296878 | Songey,Jim H | Furuta,Andrew Blain | #EMPTY | Honolulu | US112 | SALT Income Franch | 200563 | 2423Z | SALT - SAT STM | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12283 | **SPORTS SHINKO CO LTD Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12284 | SPRINGER CHIYO KANO | 60046964 | MISC. TAX SERVICES | 10197734 | Ida,Walter Y. | Chu,Grace L | #EMPTY | Honolulu | US112 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12285 | SPRINGER CHIYO KANO | 60046964 | TAX RETURNS | 10203568 | Ida,Walter Y. | Chu,Grace L | #EMPTY | Honolulu | US112 | Federal Tax | 200250 | 22200 | Compliance - Individual | C | 79 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12286 | **SPRINGER CHIYO KANO Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12287 | SRECO FLEXIBLE INC | 60019714 | COMPLIANCE (TAX) | 10167684 | Morris,Craig S | Morris,Craig S | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 88 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12288 | SRECO FLEXIBLE INC | 60019714 | COMPLIANCE | 10312951 | Sasaki,Carl H | Sasaki,Carl H | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 75 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12289 | SRECO FLEXIBLE INC | 60019714 | CONSULTING | 10113819 | Sasaki,Carl H | Morris,Craig S | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12290 | SRECO FLEXIBLE INC | 60019714 | TAX WORK | 10084865 | Sasaki,Carl H | Morris,Craig S | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12291 | **SRECO FLEXIBLE INC Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12292 | SS DESIGN | 60034699 | SO CAL PERSONAL PR | 10157478 | Morris,Jeffery L | Lee,Charles K. | #EMPTY | Los Angeles | US147 | SALT Property Tax | 200268 | 2453Q | SALT - Pers Prop Tax Tra | C | 73 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12293 | SS DESIGN | 60034699 | TAX COMPLIANCE | 10216932 | Wilcox,Ronald C | Lee,Charles K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12294 | **SS DESIGN Total** | | | | | | | | | | | | | | | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12295 | SSD PLASTIC INC | 60032696 | A&C | 10206996 | Morris,Jeffery L | Lee,Charles K. | #EMPTY | Los Angeles | US147 | SALT Income Franch | 200563 | 2413A | SALT - I&F Key Client Co | C | 70 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12296 | SSD PLASTIC INC | 60032696 | 1998 CORPORATE TAX | 10107114 | Wilcox,Ronald C | Lee,Charles K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 49 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12297 | SSD PLASTIC INC | 60032696 | 1999 CORPORATE TAX | 10269809 | Wilcox,Ronald C | Lee,Charles K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 79 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12298 | SSD PLASTIC INC | 60032696 | 1999 TAX COMPLIANCE | 10299932 | Wilcox,Ronald C | Lee,Charles K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 53 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12299 | SSD PLASTIC INC | 60032696 | 1999-2 TAX COMPLIANC | 10375391 | Wilcox,Ronald C | Kim,Whitestone H. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 61 | 0 | -3,835 | 0 | -3,835 | 0 | 0.0 |
| 12300 | SSD PLASTIC INC | 60032696 | 2000-1 TAX COMPLIANC | 10397165 | Wilcox,Ronald C | Kim,Whitestone H. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | L | 77 | 78.4 | 13,774 | 17,737 | -3,963 | 77.66 | 77.7 |
| 12301 | SSD PLASTIC INC | 60032696 | 2001 TAX COMPLIANCE | 10516347 | Wilcox,Ronald C | Kim,Whitestone H. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | O | 70 | 3 | 497 | 700 | -203 | 71 | 71.0 |
| 12302 | SSD PLASTIC INC | 60032696 | IRS EXAM | 10373651 | Wilcox,Ronald C | Kim,Whitestone H. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | C | 84 | 6 | 922 | 1,200 | -278 | 76.83 | 76.8 |
| 12303 | SSD PLASTIC INC | 60032696 | IRS EXAM | 10414717 | Wilcox,Ronald C | Kim,Whitestone H. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 22100 | Compliance - Corporate | O | 76 | 25 | 5,776 | 7,600 | -1,824 | 76 | 76.0 |
| 12304 | SSD PLASTIC INC | 60032696 | TAX CONSULTING | 10143923 | Wilcox,Ronald C | Lee,Charles K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12305 | **SSD PLASTIC INC Total** | | | | | | | | | | | | | | | 112.4 | 17,134 | 27,237 | -10,103 | 301.49 | 62.9 |
| 12306 | ST FRANCIS HEALTH CARE | 60011656 | AVR FYB 01-01-95 | 10123230 | Employee,Inactive | Employee,Inactive | #EMPTY | Honolulu | US112 | C&B | 200256 | 20200 | FTP C&B Compensation | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12307 | ST FRANCIS HEALTH CARE | 60011656 | AVR FYB 1-1-98 | 10218637 | Employee,Inactive | Employee,Inactive | #EMPTY | Honolulu | US112 | C&B | 200256 | 20200 | FTP C&B Compensation | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12308 | ST FRANCIS HEALTH CARE | 60011656 | GENERAL EBC | 10129432 | Employee,Inactive | Employee,Inactive | #EMPTY | Honolulu | US112 | C&B | 200256 | 20200 | FTP C&B Compensation | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12309 | ST FRANCIS HEALTH CARE | 60011656 | EXCISE TAX | 10206438 | Ida,Walter Y. | Stiles,Timothy A.a. | #EMPTY | Honolulu | US112 | Federal Tax - Sub 2 | 200252 | 22700 | FTP Excise | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12310 | ST FRANCIS HEALTH CARE | 60011656 | EXCISE TAX (12/99) | 10294660 | Ida,Walter Y. | Stiles,Timothy A.a. | #EMPTY | Honolulu | US112 | Federal Tax - Sub 2 | 200252 | 22700 | FTP Excise | C | 60 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12311 | ST FRANCIS HEALTH CARE | 60011656 | TAX RETURN | 10211906 | Ida,Walter Y. | Ariya,Claire R. | #EMPTY | Honolulu | US112 | Federal Tax | 200250 | 20100 | General - Corporate Tax | C | 35 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 12312 | ST FRANCIS HEALTH CARE | 60011656 | 00 CMNTY HLTH SRV T/ | 10506668 | Meughan,John Francis | Stibbard,Catherine R | #EMPTY | Honolulu | US112 | Federal Tax | 200250 | 22100 | Compliance - Corporate | O | 76 | 2.5 | 333 | 438 | -105 | 76.03 | 76.0 |
| 12313 | ST FRANCIS HEALTH CARE | 60011656 | '00 HLTH CARE SYS T/F | 10506693 | Meughan,John Francis | Stibbard,Catherine R | #EMPTY | Honolulu | US112 | Federal Tax | 200250 | 22100 | Compliance - Corporate | O | 76 | 5.5 | 980 | 1,283 | -303 | 76.01 | 76.0 |

EXHIBIT 11 MALLOY HAD GREENBERG OPINIONS IN JULY OF 2002 NOTWITHSTANDING MALLOY TOLD THE USDOJ AND THE IRS GREENBERG CONCEALED THE OPINIONS

**To:** Brockway, David H; Smith, Richard H (Vice Chair-Tax)
**CC:**
**BCC:**
**Date:** 07/21/2002 12:22:42 PM
**From:** Gremminger, Steven L (US/NSS/OGC)
**Folder:** Attorney Client and Privileged
**Subject:** RE: Opinions to Lee, Goddard & Duffy - Privileged and Confidential
**Attachments:**

David, I have the opinions. Will get them to you on Monday if you are in DC. As to what we do to advise the IRS, we have some limited precedent to follow-- will be glad to discuss it with you. Basically what we have done for example with FLIP (where we found an undisclosed client a couple of months after we turned over the other names) was to write a letter to the Agent making the diclosure. If appropriate, that is what we will basically do here-- no make a big deal of it, not provide an explanation or excuse up front, just provide the information.

Richard, with all due respect the conversation that David describes is one that the firm and the tax practice needs to have going forward. Perhaps you will want John to spearhead an initiative in this regard, or Diane?

Steve Gremminger
Associate General Counsel, KPMG LLP
(202) 533-3124
(212) 909-5456
(212) 909-5685 (fax)
***Privileged and Confidential***

-----Original Message-----
**From:** Brockway, David H
**Sent:** Saturday, July 20, 2002 8:56 AM
**To:** Gremminger, Steven L (US/NSS/OGC); Smith, Richard H (Vice Chair-Tax)
**Subject:** RE: Opinions to Lee, Goddard & Duffy - Privileged and Confidential

Steve, I don't know that I have a copy of these opinions -- if you want someone in WNT, please send a copy on to me. I would also like to discuss the question of what we do if Larry's supposition is correct. Richard, we should discuss at some point what our rules should be to minimize the likelihood that things like Larry fears occurred here occur again in the future and the consequences of rule violations.

-----Original Message-----
**From:** DeLap, Larry
**Sent:** Thursday, July 18, 2002 9:05 PM
**To:** Gremminger, Steven L (US/NSS/OGC)
**Cc:** Brockway, David H
**Subject:** Opinions to Lee, Goddard & Duffy - Privileged and Confidential

Steve -

Dennis Malloy finally forwarded a copy of two opinions concerning "options" transactions issued to Lee, Goddard & Duffy in 2001 by David Greenberg. You should have received a copy of those opinions form Gesele Soto.

Aside from certain violations of firm policy with respect to such opinions, it appears to me that both transactions should have been disclosed to the IRS in connection with the summonses

EXHIBIT 12 DETAILED REVIEW OF ALL GREENBERG'S FILES BY MALLOY IN 2001 (INCLUDING THE FACT HE STATES HE MADE COPIES) YET MALLOY PERJURED HIMSELF AND TOL THE USDOJ GREENBERG CONCEALED THESE FILES

**To:** Affonso, Dale A; Belezzuoli, Jennifer D; Bendheim, Redge E; Brown, Brad L; Busick, Ronald L; Davis, Michael E; Dunlap, Robert C; Farwell, Randal H; Garcia, Luis H; Greenberg, David; Grigorian, Edmond; Hacker, Barry C; Hansen, Donna L; Hasting, Carl D; Holt, Michael J; Hutchison, Mark-Warner Cntr; Ito, Dennis A; Kadenacy, Stephen M; Leung, Naoko ; Malloy, Dennis J; Maughan, John F; Mccrimlisk, George H; McKenzie, Philip A; Moffett, Martin L; Montero, Raymond R; Morris, Craig S; Morris, Jeffery L; Norton, Clarke; O'brien, Timothy LA J; Prins, Ronald W; Procsal, Rebecca L; Rivkin, David; Rosen, Seth M; Rudd, Troy; Sasaki, Carl H; Stelzner, S. B; Svoboda, Michael J; Tom, Randall G; Walla, Michael E; Widmann, Peter A; Wilcox, Ronald C; Witherwax, Donna L; Yasukochi, David K; Anderson, Keith (US); Armstrong, Dale; Berro, Benson R; Bertino, Thomas R; Black, Suzanne J; Blum, Hunter C; Bouchard, Ronald D; Boyar, Adam W; Boyd, Chad M (US/Century City); Bramhall, RDouglas; Brennan, Michael; Brown, Ray; Bucholtz, Cathleen A; Burgess, John D; Burns, Paul B; Capri, Alexander; Chang, Julia K; Chenowth, Matthew B; Collins, Erin M; Columbus, Patricia M; Conley, James P; Crabtree, Shanna C; Craft, Chris A; D'Addio, Michael R; De Jong, Arthur; Delgado, Christine; Domingo, Myrna G; Downs, Keith R; Duggan, Thomas E; Ente, Peter L; Fields, Jeffrey S; Fish, Robert; Frank, Cindy L; Furukawa, Takehiro; Furuta, Andrew; Glugatch, Daniel M; Graham, Stephanie; Grove, Theodore B; Guevara, Sam; Hall, Noel E; Hayes, Diane R; Hazboun, Hala; Heil, Matthew C; Hong, Chungki Kelvin; Hsiu, Johnny R; Huff, Robert; Hughes, Mark J (US/Orange County); Hung, Lisa C; Hwang, Andrew; Kadekian, Sandy M; Katahira, Naoko; Kerzner, David; Kim, EunYeong (US/Los Angeles); Kim, JH John (US/Los Angeles); Kramer, Mark A; Kreutzer, Conrad B; Lambell, Robin C; Lancaster, Tania; Lee, Gae W; Lee, Richard J; Lefebvre, Kathleen Z; Lipshy, Jeremy M; Lockrey, David ; Loper Jr., James L; Masarani, Reem; Matson, Kathleen M; Matsumoto-Cortez, Hiromi; Mazur, Gordon C; McCabe III, Joseph I; McKeon, Katherine; Mehta, Vim M; Metzgar, K. Jennifer; Misu, Masakazu; Moreno, Kathleen M; Murakami, Alton A; Nagle, John W; Nelson, Kristin A; Nicora, Darcy L; Nishibayashi, Paula L; Northrup, Todd R; Pearl, Jeremy K; Pederson, Lorna B; Pickett, James E; Pittenger, Kerri A; Prager, Daniel; Prince, Regina L; Quealy Jr., William H; Rafferty, Patrick G; Rocha, Oscar; Sabedra, Claudia M; Salzmann, Zachary V; Schwartze, Karlylle U; Simmons, Kimberly D; Stackpole, Leslie B; Stephenson, Scott D; Stibbard, Catherine R; Stumpf, Leslie A; Takaki, Cheryl M; Talbot, Pamela; Tao, Iris; Taylor, John M; Thompson, Stephen C; Trudersheim, Edward L; Uehara, Scot; Unck, Holly I; Varner, Jonathan B; Vetters, Valerie J; Villanueva, Guillermo; von Thaden, Bernhard; Wallace, Laura E; Weinberg, Jessica; Wempen, Eric P; Whitney, Mark L; Woodall, James R; Wu, Maggie W (US/Orange County); Yoo, MinHa
**CC:** Morris, Jeffery L; Bramhall, RDouglas; Burke, Michael (US/AMP WEST)
**BCC:**
**Date:** 03/25/2003 01:34:45 PM
**From:** Kadenacy, Stephen M
**Folder:** Deleted Items
**Subject:** RE: Loan Staffing - On Call Initiative - ACTION REQUIRED
**Attachments:**

All

Please keep in mind Doug's additions to the list of services. Thank you.

-Steve

GOVERNMENT EXHIBIT
S-188
(ID)

-----Original Message-----
**From:** Bramhall, RDouglas
**Sent:** Tuesday, March 25, 2003 7:50 AM
**To:** Kadenacy, Stephen M
**Cc:** Morris, Jeffery L
**Subject:** RE: Loan Staffing - On Call Initiative - ACTION REQUIRED

Steve -

Please consider a follow-up note - additional key services that may be provided include not only IRS controversy matters, but State controversy matters as well. And one particular project we can help with is State reporting of federal final audit adjustments...

Finally, amended returns sometimes get low priority - the value of timely preparing amended returns may warrant On Call services....

Doug

-----Original Message-----
**From:** Kadenacy, Stephen M
**Sent:** Monday, March 24, 2003 6:09 PM
**To:** Affonso, Dale A; Belezzuoli, Jennifer D; Bendheim, Redge E; Brown, Brad L; Busick, Ronald L; Davis, Michael E; Dunlap, Robert C; Farwell, Randal H; Garcia, Luis H; Greenberg, David; Grigorian, Edmond; Hacker, Barry C; Hansen, Donna L; Hasting, Carl D; Holt, Michael J; Hutchison, Mark-Warner Cntr; Ito, Dennis A; Kadenacy, Stephen M; Leung, Naoko ; Malloy, Dennis J; Maughan, John F; Mccrimlisk, George H; McKenzie, Philip A; Moffett, Martin L; Montero, Raymond R; Morris, Craig S; Morris, Jeffery L; Norton, Clarke; O'brien, Timothy LA J; Prins, Ronald W; Procsal, Rebecca L; Rivkin, David; Rosen, Seth M; Rudd, Troy; Sasaki, Carl H; Stelzner, S. B; Svoboda, Michael J; Tom, Randall G; Walla, Michael E; Widmann, Peter A; Wilcox, Ronald C; Witherwax, Donna L; Yasukochi, David K; Anderson, Keith (US); Armstrong, Dale; Berro, Benson R; Bertino, Thomas R; Black, Suzanne J; Blum, Hunter C; Bouchard, Ronald D; Boyar, Adam W; Boyd, Chad M (US/Century City); Bramhall, RDouglas; Brennan, Michael; Brown, Ray; Bucholtz, Cathleen A; Burgess, John D; Burns, Paul B; Capri, Alexander; Chang, Julia K; Chenowth, Matthew B; Collins, Erin M; Columbus, Patricia M; Conley, James P; Crabtree, Shanna C; Craft, Chris A; D'Addio, Michael R; De Jong, Arthur; Delgado, Christine; Domingo, Myrna G; Downs, Keith R; Duggan, Thomas E; Ente, Peter L; Fields, Jeffrey S; Fish, Robert; Frank, Cindy L; Furukawa, Takehiro; Furuta, Andrew; Glugatch, Daniel M; Graham, Stephanie; Grove, Theodore B; Guevara, Sam; Hall, Noel E; Hayes, Diane R; Hazboun, Hala; Heil, Matthew C; Hong, Chungki Kelvin; Hsiu, Johnny R; Huff, Robert; Hughes, Mark J (US/Orange County); Hung, Lisa C; Hwang, Andrew; Kadekian, Sandy M; Katahira, Naoko; Kerzner, David; Kim, EunYeong (US/Los Angeles); Kim, JH John (US/Los Angeles); Kramer, Mark A; Kreutzer, Conrad B; Lambell, Robin C; Lancaster, Tania; Lee, Gae W; Lee, Richard J; Lefebvre, Kathleen Z; Lipshy, Jeremy M; Lockrey, David ; Loper Jr., James L; Masarani, Reem; Matson, Kathleen M; Matsumoto-Cortez, Hiromi; Mazur, Gordon C; McCabe III, Joseph I; McKeon, Katherine; Mehta, Vim M; Metzgar, K. Jennifer; Misu, Masakazu; Moreno, Kathleen M; Murakami, Alton A; Nagle, John W; Nelson, Kristin A; Nicora, Darcy L; Nishibayashi, Paula L; Northrup, Todd R; Pearl, Jeremy K; Pederson, Lorna B; Pickett, James E; Pittenger, Kerri A; Prager, Daniel; Prince, Regina L; Quealy Jr., William H; Rafferty, Patrick G; Rocha, Oscar; Sabedra, Claudia M; Salzmann, Zachary V; Schwartze, Karlylle U; Simmons, Kimberly D; Stackpole, Leslie B; Stephenson, Scott D; Stibbard, Catherine R; Stumpf, Leslie A; Takaki, Cheryl M; Talbot, Pamela; Tao, Iris; Taylor, John M; Thompson, Stephen C; Trudersheim, Edward L; Uehara, Scot; Unck, Holly I; Varner, Jonathan B; Vetters, Valerie J; Villanueva, Guillermo; von Thaden, Bernhard; Wallace, Laura E; Weinberg, Jessica; Wempen, Eric P; Whitney, Mark L; Woodall, James R; Wu, Maggie W (US/Orange County); Yoo, MinHa
**Cc:** Burke, Michael (US/AMP WEST); Hill, Katherine C (US/NY)
**Subject:** Loan Staffing - On Call Initiative - ACTION REQUIRED

TO Tax Partners and Managers

FROM Stephen Kadenacy

DATE March 24, 2003

As busy season draws to a close, we need to ensure that we are exploring all possible avenues for

new business. We must maintain a strong pipeline of new projects and additional work to grow revenue and maintain chargeability for our managers and staff. This need for a full pipeline is part of what is driving our continued push into the marketplace through initiatives such as the Local 50 program even during "tax time."

As part of our business development efforts, we are implementing a loan staffing program for our clients and targets - the *On Call* program. In these difficult times, many companies have significantly cut tax department budgets or shifted resources away from tax to the finance department to help meet new SEC reporting requirements. The remaining tax staff is often stretched thin even after tax season and lacks the resources to complete non-essential projects. "Borrowing" a well-trained, knowledgeable KPMG tax resource will help the client meet these needs without incurring additional salary and benefits costs.

For the client or target, this solves a short-term problem without requiring a long-term commitment. For KPMG, this strengthens our relationship with the company, increases revenue and keeps our resources utilized.

Please use the attached email letter to contact your clients and targets to help them determine if *On Call* is the right answer for their needs. The following are examples of issues that loan staffing can help companies address:

- Federal tax compliance
- State and local tax compliance
- Property tax compliance
- Escheat compliance
- Reconciliation of Trade and Customs filings with IRS filings
- Tax controversy projects - compliance with IRS notices
- Quarterly estimates
- Other

The *On Call* program is not intended to replace traditional tax consulting or solution work, but to provide a resource to help the client manage fluctuations in staffing demands within time and budget constraints.

Fees for the *On Call* program are competitive and should be negotiated separately for each project based on the scope of work, experience required, timing and staff availability.

April 15 is around the corner; please reach out to your clients and targets this week to discuss the potential for using *On Call*. I expect each of you to have at least three targets for this program. Please send **Kathy Hill** the names of the companies that you will contact regarding this program and follow up with their response by March 31.

Thanks for your support on this initiative.

<< File: Loan Staffing Program.doc >>



KPMGZE-0038-002814

| | A | B |
|---|---|---|
| 1 | | Other Items |
| 2 | | |
| 3 | | |
| 4 | 1. | No letter from underlying client for Steven Pelty, Chicago/Miller (Instashred), Baldwin, B&J had an acknowledgement line but was not signed by B&J, only Lee Goddard & Duffy. |
| 5 | | |
| 6 | 2. | Instashred discussion of business purpose looks like KPMG is practing law. Need to indicate who we are relying on and that the client needs to get an opinion on asset protection/creditor rights, etc. or state clearly that these are client representations. |
| 7 | | |
| 8 | 3. | Baldwin letter did not have name of letter signer or title. Merely copied leter from website. |

| | A | B | C | D | E | F | G | H | I | J | K |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | **Eng Ltr Date** | **Client Name** | **EL Signed?** | **Fee** | | **Fees Collected** | **Support in File?** | **Transaction** | **Opinion Level** | **Accuracy Opinion?** | |
| 2 | 06/27/00 | Chicago Miller (Instashred) | Y (see other items) | 750,000 | (1) | | Y | LLC redemption notes | MLTN | Y | (2) |
| 3 | 09/10/99 | Baldwin | Y (see other items) | 750,000 | (4) | | Y | From S-Corp. owners prior to LLC selling asses to 3rd party | | | |
| 4 | as of 7/21/00 | B&J Development LLP | Y (see other items) | 50,000 | | | Y | Redemption notes | MLTN 10/10/00 draft | Y | (3) |
| 5 | 06/19/00 | Steve Petty (Airweld) | Y (see other items) | 342,500 | (1) | | N little support in file | Redemption notes | MLTN | Y | (3) |
| 6 | 02/05/01 | William Chetney | Y (see other items) | 275,000 | | | Y | Redemption notes | MLTN | Y | (3) |
| 7 | 12/13/99 | Digital Age Capital | Y (see other items) | 250,000 | (1) | | Y | Redemption notes | MLTN 6/13/00 draft | Y | (2) |
| 8 | 08/02/01 | Albert Seeno (Seeno Construction) | Y (see other items) | 500,000 | | | Y | Redemption notes | MLTN 9/2001 DRAFT | Y | (3) |
| 9 | 07/13/00 | Fred Sands | Y (see other items) | 985,000 | | | y | Redemption notes | MLTN 6/26/01 | Y | (3) |
| 10 | 12/22/99 | Lin Family | Y | 975,000 | | | Y | Redemption notes | MLTN 9./5/01 | Y | (3) |
| 11 | ? | Yucaipa | ? | ? | | | Little or none | Redemption notes | MLTN 11/16/99 | | |
| 12 | 06/01/00 | RGI Inc. | Y | 1,250,000 | (5) | | Y | Digital Option | MLTN 4/12/01 | Y page 5 of opinion letter | |
| 13 | 09/27/00 | CKE (Carl Karcher) | Y | 300,000 | | | Y | Option (long & short) | MLTN 8/10/01 | Y | (3) |
| 14 | | | | | | | | | | | |
| 15 | | | | | | | | | | | |
| 16 | (1) | 12.5 % of fee due with signed EL; remaining due after opinion issued. Value-added fee; no approval in file. | | | | | | | | | |
| 17 | (2) | Page 42 of opinion says the transaction will not fall within tax shelter" definition. Also see Page 8 (of 4/17/01 draft) and bottom of page 44. Then see page 45. | | | | | | | | | |
| 18 | (3) | Same as (2) but does not state a general conclusion. Opinion in file dated as of 7/21/2000 does opine. Later opiinon dated 7/26/01 restates the final conclusion. | | | | | | | | | |
| 19 | (4) | Contingent fee - no approval. EL being revised. | | | | | | | | | |
| 20 | (5) | Consists of 990,000 for opinion and $260,000 other consulting related to transaction. | | | | | | | | | |

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| | A | B |
|---|---|---|
| 1 | | Other Items |
| 2 | | |
| 3 | | |
| 4 | 1. | No letter from underlying client for Steven Pelty, Chicago/Miller (Instashred), Baldwin, B&J had an acknowledgement line but was not signed by B&J, only Lee Goddard & Duffy. |
| 5 | | |
| 6 | 2. | Instashred discussion of business purpose looks like KPMG is practing law. Need to indicate who we are relying on and that the client needs to get an opinion on asset protection/creditor rights, etc. |
| 7 | | |
| 8 | 3. | Baldwin letter did not have name of letter signer or title. Merely copied leter from website. |

| | A | B | C | D | E | F | G | H | I | J |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | **Eng Ltr Date** | **Client Name** | **EL Signed?** | **Fee** | | **Fees Collected** | **Support in File?** | **Transaction** | **Opinion Level** | **Accuracy Opinion?** |
| 2 | 06/27/00 | Chicago Miller (Instashred) | Y (see other items) | 750,000 | (1) | $ 500,006 | Y | Redemption notes | MLTN | Y |
| 3 | 09/10/99 | Baldwin | Y (see other items) | 750,000 | (4) | $ 150,000 | Y | Redemption notes | | |
| 4 | as of 7/21/00 | B&J Development LLP | Y (see other items) | 50,000 | | $ - | Y | Redemption notes | MLTN 10/10/00 draft | Y |
| 5 | 06/19/00 | Steve Petty (Airweld) | Y (see other items) | 342,500 | (1) | $ 300,000 | Little documentation in file other than the opinion | Redemption notes | MLTN | Y |
| 6 | 02/05/01 | William Chetney | Y (see other items) | 275,000 | | | Y | Redemption notes | MLTN | Y |
| 7 | 12/13/99 | Digital Age Capital | Y (see other items) | 250,000 | (1) | $ 200,000 | Y | Redemption notes | MLTN 6/13/00 draft | Y |
| 8 | 08/02/01 | Albert Seeno (Seeno Construction) | Y (see other items) | 500,000 | (1) | $ 312,225 | Y | Redemption notes | MLTN 9/2001 DRAFT | Y |
| 9 | 07/13/00 | Fred Sands | Y (see other items) | 985,000 | (1) | $ 900,000 | Y | Redemption notes | MLTN 6/26/01 | Y |
| 10 | 12/22/99 | Lin Family | Y | 975,000 | (1) | $ 965,000 | Y | Redemption notes | MLTN 9./5/01 | Y |
| 11 | ? | Yucaipa | ? | ? | | $ 360,375 | Little documentation in file other than the opinion and org charts | Redemption notes | MLTN 11/16/99 | |
| 12 | 06/01/00 | RGI Inc. | Y | 1,250,000 | (5) | $ 66,702 | Y | Digital Option | MLTN 4/12/01 | Y page 5 of opinion letter |
| 13 | 09/27/00 | CKE (Carl Karcher) | Y | 300,000 | | $ - | Y | Option (long & short/high low) | MLTN 8/10/01 | Y |
| 14 | | | | | | | | | | |
| 15 | | | | | | | | | | |
| 16 | ① 12.5 % of fee due with signed EL; remaining due after opinion issued. Value-added fee; no approval in file. | | | | | | | | | |
| 17 | ② Page 42 of opinion says the transaction will not fall within "tax shelter" definition. Also see Page 8 (of 4/17/01 draft) and bottom of page 44. Then see page 45. The opinion letter states there is a greated than 50% chance the client will prevail on the transaction if challenged and the latter pages say that the regulations state a person relying on advice that has a greater than 50% chance of success wil not be penalized. | | | | | | | | | |
| 18 | ③ Same as (2) but does not state a general conclusion. Opinion in file dated as of 7/21/2000 does opine. Later opinion dated 7/26/01 restates the final conclusion. | | | | | | | | | |
| 19 | ④ Contingent fee - no approval. EL being revised. | | | | | | | | | |
| 20 | ⑤ Consists of 990,000 for opinion and $260,000 other consulting related to transaction. | | | | | | | | | |
| 21 | | | | | | | | | | |

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| 1 | | |
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|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | **Los Angeles subGeo Tax Self Review** | | | | | | | | | | |
| 2 | Client Revenue Data for 12 months beginning Oct 1, 2000 thru Sep 30, 2001 | | | | | | | | | | |
| 3 | *sorted by Client then by partner* | | | | | | | | | | |
| 4 | | | | | | | | | | | |
| 5 | Eng Client Name | Eng Cli# | Eng Name | Eng# | Engagement Partner | Eng Manager | Tax Mng Dir | Eng BU | Eng BU# | Eng Prod Descr | Eng Pr# |
| 6 | AD SEENO CONSTRUCTION | 60006264 | ADS REORGANIZATION | 10518605 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 7 | B & J DEVELOPMENT, LP | 60067001 | TAX CONSULTING | 10392511 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 8 | BERNSTEIN, ALAN | 60066999 | TAX CONSULTING | 10392497 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 9 | BIEDERMAN, CHARLES | 60067000 | TAX CONSULTING | 10392507 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 10 | BRELAND, CHARLES | 60066998 | TAX CONSULTING | 10392493 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 11 | CHEN & ASSOCIATES INC | 60066821 | TAX CONSULTING | 10386285 | Greenberg,David B. | Teen,Michael Richard | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 12 | DOWNEY TOY COMPANY | 60060140 | TAX COMPLIANCE | 10314912 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 13 | DOWNEY TOY COMPANY | 60060140 | TAX CONSULTING | 10115544 | Greenberg,David B. | Greenberg,David B. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 14 | DOWNEY TOY COMPANY | 60060140 | TAX CONSULTING | 10260438 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 15 | FRED SANDS REALTORS | 60014638 | TAX CONSULTING | 10389707 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 16 | FRED SANDS REALTORS | 60014638 | TAX CONSULTING | 10418525 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 17 | FREMONT GENERAL CORPC | 60060845 | TAX | 10369890 | Greenberg,David B. | Gergen,Patricia A. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 18 | GEMSTAR INTERNATIONAL | 60026825 | GEMSTAR TV GUIDE IN | 10381987 | Greenberg,David B. | Teen,Michael Richard | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 19 | GEMSTAR INTERNATIONAL | 60026825 | SHORT PERIOD | 10403377 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 20 | GEMSTAR INTERNATIONAL | 60026825 | TAX COMPLIANCE YEAF | 10478771 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 21 | HANNA, DAVID | 60063728 | PFP | 10407795 | Greenberg,David B. | Greenberg,David B. | #EMPTY | Los Angeles | US147 | Personal Financial P | 200556 |
| 22 | HANNA, DAVID | 60063728 | STRATECON | 10407914 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 23 | JAROTH INC. | 60060169 | TAX CONSULTING | 10096062 | Greenberg,David B. | Gantman,Andrew L. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 24 | JEFFRY, GERALD J. | 60067058 | TAX CONSULTING | 10399350 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 25 | JEFFRY, GERALD J. | 60067058 | TAX CONSULTING | 10418533 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 26 | KARCHER, CARL ENTERPRI | 60006188 | CARLS JR. #2 | 10454529 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 27 | KHAN, ROOMY | 60066997 | TAX CONSULTING | 10392488 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 28 | KING, CAROL ANN | 60066922 | TAX CONSULTING | 10389706 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 29 | LEE & GODDARD, DUFFY | 60059648 | BALDWIN BROS. | 10374052 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 30 | LEE & GODDARD, DUFFY | 60059648 | BILL CHETNEY | 10454441 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 31 | LEE & GODDARD, DUFFY | 60059648 | CHICAGO/TOM MILLER | 10374066 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 32 | LEE & GODDARD, DUFFY | 60059648 | DIGITAL AGE | 10374072 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 33 | LEE & GODDARD, DUFFY | 60059648 | JUBILEE MALL | 10374074 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 34 | LEE & GODDARD, DUFFY | 60059648 | LIN FAMILY | 10374087 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 35 | LEE & GODDARD, DUFFY | 60059648 | MAGNETIC DATA TECHI | 10512518 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 36 | LEE & GODDARD, DUFFY | 60059648 | MARISCO/KING | 10374091 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 37 | LEE & GODDARD, DUFFY | 60059648 | MOLNAR | 10374095 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 38 | LEE & GODDARD, DUFFY | 60059648 | RGI | 10374098 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 39 | LEE & GODDARD, DUFFY | 60059648 | SDR | 10374099 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 40 | LEE & GODDARD, DUFFY | 60059648 | SJB CONSULTING | 10457503 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 41 | LEE & GODDARD, DUFFY | 60059648 | SJB CONSULTING | 10455598 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 42 | LEE & GODDARD, DUFFY | 60059648 | SPILSBURY | 10374101 | Greenberg,David B. | Gantman,Andrew L. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |

| | L | M | N | O | P | Q | R | S | T | U |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | | | | | | | | | | |
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| 3 | | | | | | | | | | |
| 4 | | | | | | | | | | |
| 5 | Eng Serv Code | Eng Service Code | Eng Sta tus | Eng ERP | FYTD Chgd Hrs | FY01 Net Eng Revenue | FYTD_Stan dard_Eng_ Revenue | FYTD_Tot al_Discoun t | FYTD_Rea lization_Pe rcent | Calc Rlz Pct |
| 6 | 27104 | CCS (Virtual Strat) | O | 70 | 0 | 300,000 | 0 | 300,000 | 0 | 0.0 |
| 7 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 8 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 9 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 200,288 | 288 | 200,000 | 69544.44 | ###### |
| 10 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 11 | 27104 | CCS (Virtual Strat) | C | 70 | 0.2 | 62 | 75 | -13 | 83.15 | 83.1 |
| 12 | 22100 | Compliance - Corporate | O | 75 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 13 | 99999 | Unknow Service Code De | C | 51 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 14 | 27104 | CCS (Virtual Strat) | C | 11 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 15 | 20100 | General - Corporate Tax ( | O | 100 | 48.5 | 80,613 | 20,613 | 60,000 | 391.08 | 391.1 |
| 16 | 20100 | General - Corporate Tax ( | O | 100 | 49 | 919,160 | 19,160 | 900,000 | 4797.29 | 4,797.3 |
| 17 | 22100 | Compliance - Corporate | C | 0 | 0 | -8 | 0 | -8 | 0 | 0.0 |
| 18 | 22100 | Compliance - Corporate | C | 75 | 160.8 | 31,092 | 40,880 | -9,788 | 76.06 | 76.1 |
| 19 | 22100 | Compliance - Corporate | O | 76 | 139.8 | 29,423 | 38,715 | -9,292 | 76 | 76.0 |
| 20 | 22100 | Compliance - Corporate | O | 71 | 49.9 | 9,050 | 12,746 | -3,696 | 71 | 71.0 |
| 21 | 25100 | PFP - General | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 22 | 27104 | CCS (Virtual Strat) | L | 100 | 500 | 438,250 | 250,000 | 188,250 | 175.3 | 175.3 |
| 23 | 27104 | CCS (Virtual Strat) | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 24 | 27103 | Risk Financing (Virtual Str | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 25 | 27103 | Risk Financing (Virtual Str | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 26 | 27104 | CCS (Virtual Strat) | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 27 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 28 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 29 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 1,100,000 | 0 | 1,100,000 | 0 | 0.0 |
| 30 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 275,000 | 0 | 275,000 | 0 | 0.0 |
| 31 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 500,000 | 0 | 500,000 | 0 | 0.0 |
| 32 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 200,000 | 0 | 200,000 | 0 | 0.0 |
| 33 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 200,000 | 0 | 200,000 | 0 | 0.0 |
| 34 | 27104 | CCS (Virtual Strat) | O | 100 | 28 | 16,400 | 16,400 | 0 | 100 | 100.0 |
| 35 | 27104 | CCS (Virtual Strat) | O | 70 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 36 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 37 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 38 | 27104 | CCS (Virtual Strat) | O | 100 | 496.5 | 244,650 | 244,650 | 0 | 100 | 100.0 |
| 39 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 40 | 27104 | CCS (Virtual Strat) | C | 0 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 41 | 27104 | CCS (Virtual Strat) | O | 0 | 2099 | 0 | 907,695 | -907,695 | 0 | 0.0 |
| 42 | 27104 | CCS (Virtual Strat) | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |

| | A | B | C | D | E | F | G | H | I | J | K |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 5 | Eng Client Name | Eng Cli# | Eng Name | Eng# | Engagement Partner | Eng Manager | Tax Mng Dir | Eng BU | Eng BU# | Eng Prod Descr | Eng Pr# |
| 43 | LEE & GODDARD, DUFFY | 60059648 | TAX COMPLIANE (YUCA | 10316165 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 44 | LEE & GODDARD, DUFFY | 60059648 | TAX CONSULTING | 10382873 | Greenberg,David B. | Teen,Michael Richard | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 45 | LEE & GODDARD, DUFFY | 60059648 | TAX CONSULTING | 10142160 | Greenberg,David B. | Gantman,Andrew L. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 46 | LEE & GODDARD, DUFFY | 60059648 | TAX CONSULTING PRO. | 10357763 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 47 | LEE & GODDARD, DUFFY | 60059648 | TAX CONSULTING PRO. | 10357766 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 48 | LEE & GODDARD, DUFFY | 60059648 | TAX CONSULTING PRO. | 10357768 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 49 | LEE & GODDARD, DUFFY | 60059648 | YUCAIPA | 10374106 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 50 | LEONARD GREEN AND PAR | 60027782 | STRATECON | 10408953 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 51 | LIN FAMILY CO | 60038398 | TAX CONSULTING | 10383371 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 52 | PETTY, STEVEN | 60067057 | TAX CONSULTING | 10399351 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 53 | PETTY, STEVEN | 60067057 | TAX CONSULTING | 10418482 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 54 | R&B REALTY GROUP | 60008424 | TAX CONSULTING | 10072445 | Greenberg,David B. | Teen,Michael Richard | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 55 | RESOURCE GROUP INTERN | 60033072 | TAX CONSULTING | 10387651 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 56 | ROYAL CONTRACTING CO L | 60075470 | CONSULTING SERVICE | 10508184 | Greenberg,David B. | Murakami,Alton A | #EMPTY | Honolulu | US112 | Stratecon Area | 200259 |
| 57 | SPECIALIZED DIRECT RESP | 60060168 | TAX CONSULTING | 10074989 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 58 | SPILSBURY, JERRY | 60063524 | TAX CONSULTING | 10383380 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 59 | SPILSBURY, JERRY | 60063524 | TAX CONSULTING | 10387653 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 60 | SPILSBURY, JERRY | 60063524 | TAX MINIMIZATION | 10277784 | Greenberg,David B. | Gantman,Andrew L. | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 61 | SUNRIDER CORPORATION, | 60015345 | 1999 TAX RETURN | 10357300 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 62 | SUNRIDER CORPORATION, | 60015345 | 2000 TAX COMPLIANCE | 10424047 | Greenberg,David B. | Sternberg,Robert K. | #EMPTY | Los Angeles | US147 | Federal Tax | 200250 |
| 63 | SUNRIDER CORPORATION, | 60015345 | TAX CONSULTING | 10177698 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 64 | THORNE, DONALD | 60066995 | TAX CONSULTING | 10392476 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 65 | TURNER, FRED | 60066996 | TAX CONSULTING | 10392485 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |
| 66 | ZIONS BANCORPORATION | 60009848 | TAX CONSULTING | 10357758 | Greenberg,David B. | Black,Suzanne Joy | #EMPTY | Los Angeles | US147 | Stratecon Area | 200259 |

| | L | M | N | O | P | Q | R | S | T | U |
|---|---|---|---|---|---|---|---|---|---|---|
| 5 | Eng Serv Code | Eng Service Code | Eng Status | Eng ERP | FYTD Chgd Hrs | FY01 Net Eng Revenue | FYTD_Standard_Eng_Revenue | FYTD_Total_Discount | FYTD_Realization_Percent | Calc Rlz Pct |
| 43 | 22100 | Compliance - Corporate | O | 75 | -425.5 | -151,838 | -218,925 | 67,087 | 69.36 | 69.4 |
| 44 | 27104 | CCS (Virtual Strat) | C | 70 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 45 | 27104 | CCS (Virtual Strat) | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 46 | 27104 | CCS (Virtual Strat) | O | 100 | 17 | -26,107 | -26,107 | 0 | 100 | 100.0 |
| 47 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 48 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 49 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 200,000 | 0 | 200,000 | 0 | 0.0 |
| 50 | 27104 | CCS (Virtual Strat) | O | 100 | 125.5 | 62,750 | 62,750 | 0 | 100 | 100.0 |
| 51 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 920,000 | 0 | 920,000 | 0 | 0.0 |
| 52 | 27103 | Risk Financing (Virtual Str | C | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 53 | 27103 | Risk Financing (Virtual Str | O | 100 | 0.5 | 300,288 | 288 | 300,000 | 104266.67 | 104,267 |
| 54 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 188 | 188 | 0 | 100 | 100.0 |
| 55 | 27104 | CCS (Virtual Strat) | O | 100 | 46 | 15,050 | 15,050 | 0 | 100 | 100.0 |
| 56 | 27104 | CCS (Virtual Strat) | O | 100 | 176 | 578,850 | 78,850 | 500,000 | 734.12 | 734.1 |
| 57 | 27104 | CCS (Virtual Strat) | O | 100 | 3 | 251,875 | 1,875 | 250,000 | 13433.33 | 13,433 |
| 58 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 59 | 27104 | CCS (Virtual Strat) | O | 100 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 60 | 27104 | CCS (Virtual Strat) | C | 250 | 0 | 0 | 0 | 0 | 0 | 0.0 |
| 61 | 22100 | Compliance - Corporate | L | 75 | 372.1 | 90,758 | 88,835 | 1,923 | 102.16 | 102.2 |
| 62 | 22100 | Compliance - Corporate | O | 71 | 2450 | 429,875 | 605,458 | -175,583 | 71 | 71.0 |
| 63 | 27104 | CCS (Virtual Strat) | O | 100 | 1 | 450 | 450 | 0 | 100 | 100.0 |
| 64 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 65 | 27104 | CCS (Virtual Strat) | O | 100 | 0.5 | 288 | 288 | 0 | 100 | 100.0 |
| 66 | 27104 | CCS (Virtual Strat) | O | 100 | 3 | 675 | 675 | 0 | 100 | 100.0 |

# EXHIBIT 13 RIVKIN NOTES FROM 2000 PROVING HE COMMITTED PERJURY IN THE STEIN CASE

March 6, 2000 Innovative Strategies Conference Call

**BLIPS**

They are getting calls on status of BLIPS K-1s, corrected DB 1099s on multi-borrower /BLIPS (for ease, new 1099s issued to ALL). NatWest is not going to issue a 1099. Kerry Bratton gave Rich interest numbers by email – per Jeff, no we are not going to be auditing these numbers.

K-1s are in the process. Jim Brennan and Patrick _____ are reviewing the pship K-1 templates. They have an objective of finalizing it today. Grant Thorton is preparing the K-1s. They think in the next couple of weeks.

KPMG Opinions – It is well in hand as far as templates go. They are just waiting for the green light from WNT which they expect tomorrow night. 2 types:

- OPIS opinions -- held up by new regs issued in Jan. which tangentially potentially affect OPIS transactions, so they are prepping more likely than not opinions on why those regs do not apply to us since not intended to apply to us; and
- BLIPS opinions – DB is supposed to sign off on the reps today. DB has been tinkering with them. There has also been hold-up due to the §165 profit motive test.

Doug has asked Lanning and Stein to seriously consider this soon as we have returns to file and our professional reputation is now on the line.

Tax shelter legislation – question as to when it extends out to the individual level.

President's budget proposal has a contingent liability proposal. This one is better than last year's. By it's terms, Eischeid thinks it wouldn't apply to BLIPS so also wouldn't apply to the short option strategy that we did end of last year. Anytime all assets and liabilities transferred into entity, there will be a question.

We have $5 mil. on reserve. Look for approx. $15,000 in charges for the BLIPS opinions. The period that April is in when all time should have hit so can close at end of April, early May.

**NEW STRATEGIES**

LDS – BLIPS replacement strategy. It is still alive. Has technical issues – e.g., §1001, §165. Carol Conjura is the expert on both these 2 sections. The WNT people are battling the technical analysis out. Carol is supportive of a more likely than not opinion on this. May have a longer hold period from an investment standpoint, but we aren't sure what. Jeff can't get anyone to establish a bright line on profit motive.

COINS/FLPs – these 2 are under development. They have hit road bumps (not technical bumps). However, the baton has been passed from David Smith to Richard Smith.

2 other strategies on the table:

- WEST conversion strategy. We have decided not to fool around with this any more. WNT sensed the Quadra was being uncooperative
- REACT. At DPP for approval. It is a diversification tool using CRT. No news on when we will see approval on this. DR said Watson told him maybe 3 weeks.

Resources in WNT are limited and it's hard to get them to devote time to products in addition to our regular work.

**TRACT** -- Eischeid has not heard ANYTHING on TRACT from Brockwell.

{FILENAME \p}

GOVERNMENT EXHIBIT B-510

**IDV** – We've been seeing more and more of these transactions. PLEASE input these into OMS because that is how the strategies are evaluated by Stein, etc.

**CREW-P** – PFP is getting beat up over not selling this, but Jeff thinks this is unwarranted.

Manage client expectations on products. Know them well enough to know whether they will be going through with it or not once it's been approved.

**Private annuity trust** – The FLP one – it IS a live strategy, it just needs to be properly funded up front. If you have one, then run your fact pattern by Mark. Selling spouse v. non-selling spouse; selling spouse sells LP interest to trust. Hoping that the gain is not taxed under §1041. There WILL be a gift component that WNT will need to calculate for you.

**Summary of products**
Live products: Private Annuity, IDV, 2G-IDV, Charitable LP, Grandfathered BLIPS
Under development: REACT, Diversification SWAP trade
Carol has done a matrix on the products and for whom these products are appropriate.

March 6 Western area IS call

BLIPS Multi-party 1099s. Presidio is reissuing to all parties. 1099s should be out shortly. K-1s should be out shortly. BLIPS opinions out shortly. Someone raised a §165(c)(2) profit motive question.

OPIS Opinion letter, still waiting for green light from WNT. Jeff doesn't think the new regs will be a problem, but still need WNT sign off

New products: BLIPS replacement product out shortly, there are some hurdles: economic standpoint issues but they are close technically.

CREW-P PFP got accused of not pulling our weight on this product. However, this is really specialized product and this is really hard to find. So document attempt to find candidates so we can go back to the M&A people. We haven't gotten to the bank list yet. We CAN take this out to third parties so maybe bring it out to our banking relationships. Question, is it a corporate tax shelter?

REACT At DPP. Watson thinks only 3 weeks away. Q. what happens when remainder interest bought back? How long before can get the money out? There is merger so no more trust, you just get your money back. Timing – next tax year.

WEST Maybe resurrected. It is a conversion strategy. Doug will be meeting with Quadra tomorrow.

COINS Hopefully going forward

LINKS Hopefully going forward

Private Annuity Trust

Corporate tax shelters – don't sell to taxpayers that are registered.

3-13-2000 Innovative Strategies call

OPIS opinion – no new news as to our position. We have sent our analysis to Brockway saying why we do not think the regulations will not apply to us. Jeff spent time w/ Lanning and Stein on this. Doug said per Stein, it would be unlikely that we won't be able to issue an opinion on this.

RJ is also uncertain with respect to his opinion on OPIS. RJ is in London this week.

It would take 5-10 business days to get RJ's opinion. RJ is waiting on our opinion to input the client specifics.

BLIPS opinion – we are off to the races and they are doing the mail merge so we should start seeing first draft soon. Once the mail merge is done, Angie will get the client rep. letter out to us. As soon as the reps are signed, Angie will forward the opinion letters to WNT for final approval (probably Justin will be doing the reviews). After finalized, our letter will be forwarded to Brown & Wood for them to do theirs.

Jeff will talk to RJ about our GDC opinion situation.

Try to file ASAP. But we can't file until we see the Presidio K-1s. Some people still haven't seen the DB 1099s. The K-1s will be sent to the client and the engagement team.

Opinion letter hold-back: $10,000 from Atlanta, $5,000 for WNT. Bob Wells has been pushing back on the allocation of WNT, i.e., that it will create a budgetary problem. Jeff recommends holding back $15,000 for the opinions. The firm made a top-level accrual for all the revenue but the $15,000 for the opinion letter in period 8.

Grantor trusts – Rumor that IRS will audit more grantor trust returns – it is coming through. Maybe filing a grantor trust will increase rather than decrease risk with respect to our BLIPS and OPIS letters. If already have and ID number, then options: 1099 reporting rather than 1041 reporting.

Grandfathered BLIPS – still a number of spots available. The sooner you can do a deal, the better due to potential for change in legislation. Per Doug, the landscape will probably change and we have the unique opportunity to get things in now so hurry up and get it in! Per Jeff Stein, we can be "liberal" with respect to who is/is not grandfathered in.

We will be writing out opinions concurrently with the transactions so consequences are prospective, i.e., based on certain assumptions. Problem: if the client files extension, then the firm has more exposure if prospective. We will issue the opinion the day they enter the LLC – before next April. Rationale: don't take tax risk of legislative charge, push that to the client plus, we can collect our fee. We can always issue an addendum if necessary.

Q. would Jeff advise his clients to get a new opinion letter as of filing date? Yes, he would want something closer in time. We can deal with this as a group because we will probably know ahead of time if something might happen. Our engagement letter is clear that it is based on the law at time of issuance of opinion letter and we are not obligated to go back and tell our client about changed circumstances – but that is probably not the best from a client management perspective. The engagement letter is quite clear w/ respect to our responsibilities. If we don't have an on-going relationship with the client, we don't have a HUGE responsibility to those one-time clients. We get paid to write the opinion letter. Once we write it, the risk is on the client, not us. We are not going to put our fees at risk due to something changing legislatively.

Q. how deal w/ people in a 7 year investment but then everyone leaves it after 60 days? Just look at the law/facts, e.g., you have sold your pship interest, you had a basis of x, etc. You look at economics at the time you enter, in theory, it doesn't matter what the actual economics are.

Doug hopes that DPP will take a fresh look at the BLIPS.

No apparent problem with issuing the grandfathered people an opinion.

REACT – WNT got their comments back from Larry LeLapp. There were a lot of comments so WNT will be working to clear them.

LBS (BLIPS replacement) – they will be having another meeting w/ Presidio on how to work the economics to make it easier for WNT to get to their opinion position in light of circular 230. Jeff is not sure how it will come out ultimately. Lanning, Stein, Lippman are pushing hard on WNT to find a WNT to replace BLIPS and OPIS. There is clearly a market out there for this type of product. We ARE still in the product business.

Potential IDV application – if incredibly charitable client, maybe think about using the IDV; if compare IDV to outright charitable gift, less income tax deduction w/ IDV so can quantify what they are giving up. E.g., give up $1.7 mil. in tax deduction benefit, but keep "string" on $25 mil. gift should they change their mind later on (for a cost of $1.7 mil.) No excise taxes due, no 5% distribution of private foundations, but they have a safety net should they need the money.

CREW-P – Doug talked to Stein and Lippman about this and how it has very limited application to our clients so questionable whether it should be a national product. Stein told Doug to go after the grandfathered BLIPS deals instead (spend time where it would be more productive)

TRACT – client relationship disaster.

§301 strategy – get large distributions out of corp. w/o tax. They are willing to do smaller transactions, e.g., fee down to $300-$400K range. It IS still alive and well. Maybe Lisa Kellaway or Joel Resnick (Chicago) would know more. Presenting this to a corporation so no non-disclosure. Go in treating it like a corporate tax shelter. A completely tax free distribution (maybe minor tax if not doing 100%). Some say the pay-off of the loan at the end may be a dividend – but our position is that it is completely tax free. Need an engagement letter from each shareholder so may be a problem if a lot of shareholders

3-13 Western area IS call

(missed 10 min. due to TC w/ client)

BLIPS – Deke's NY time – issue not solved yet w/ respect to being fair as to who takes the hit.

Grantor trust issue – We are going to look at blowing off the grantor trust returns. We have ID numbers. Soln: get new K-1s and 1099s in the name of the individual SSNs so into the alternative grantor trust reporting (see Reg §1.671-4).

TRACT opinion letters – No rep. letter was sent out w/ the opinion letters. It would seem that a rep. letter should be sent out and have client sign those before we can issue an opinion letter.

Utilization reports – we have huge discrepancies between timesheets and Becky Younger's utilization reports. Some of it

Grandfather BLIPS deals – maybe we can insert some people on to the list i.e., "liberal interpretation" Jeff didn't say how many spots still available. Maybe total is still 19-20 deals and currently, only 10-11 deals in the works.

OPIS – some people tell their clients there is an OPIS opinion issue, some haven't. The group says not to tell the clients – afterall, it may not be a problem.

OMS – Penelope has most everything from everyone. She has customized the spreadsheets she sends to us (e.g., give us name rather code). Larry DeLap does not like the term "BLIPS" in OMS for 2000 (we aren't supposed to be marketing it, 2000 BLIPS not approved yet). So now, labeled "a 2000 strategy"

# 3-20 IS call

OPIS OPINION – We got the green light on Friday despite the new regs. We are not opinion with respect to the application of the new regs. The regs are not self-effectuating; i.e., only applies if district director says it should apply. TCS says we don't have to prove it's application so we are OK w/ respect to exposure. They put a creative footnote in the opinion letter to deal w/ the new regs.

BLIPS OPINION – They have finished the mail merge so we should be seeing the rep. letter soon. As soon as the client signs the rep. letters, they can get them to WNT for final review.

REPORTING OF BLIPS/OPIS – They want every tax preparer to choose their own form rather then mandate a certain way of reporting. Jeff asked how people plan on reporting the single member LLCs and matching problems that may be created since the 1099s and K-1s are issued to the LLCs. Can't file a pship return since it isn't a pship. Entities typically don't get matching notices do they? (Maybe we should ask someone in the TCS group.) Matching may only be an individual thing. Tracy will follow up w/ the WNT TCS folks.

TRACT – Dan Vail has nothing to report. Waiting for Brockway to get back to them.

NQSO strategy -- Dan Vail says they are trying to get to more-likely-than not based on the Arthur Anderson opinion. They divided up the tasks. They are moving forward with it, getting closer to get there. They are going to talk again on Wed. to see where everyone stands. This is definitely a value added strategy. Litigation risk, technical issues, can we sell what Anderson is selling and make money off it. Dennis thinks we can sell it because there is demand for it, it's now just a matter of getting there.

BLIPS REPLACEMENT – They are having a huge Presidio meeting tomorrow about it so will know better tomorrow whether it's closer to a go or not.

REACT – They got Larry Delap comments, they are preparing comments for going back to Larry. The trust collapses and terminates. Larry is concerned that we are doing the same thing as what TRACT did. Larry did not have many technical comments.

NONDISCLOSURES STATEMENTS -- Jeff circulated a new nondisclosure agreement to replace ALL the other versions/variations. If want to make changes, contact Bob Peterson (PFP professional practice partner). Innovative Strategies should use nondisclosures – we are NOT selling to corporate strategies. Be up front in each strategy marketed that it is to the individuals and not the corporations. Corporations are required to registered their tax shelters. CREW-P – nondisclosures are not applicable as it IS a corporate strategy. Although to the individuals and the rates to the individuals, there ARE corporate effects (e.g., personal holding company, etc.) so nondisclosure agreements do not apply.

CONCURRING OPINIONS – On an ongoing basis, opinions will be written contemporaneously w/ the clients doing the transactions (versus waiting for near filing of the tax returns). They will coordinate the opinion writing w/ the entering into these transactions. E.g., on grandfathered BLIPS, they will start on the opinions as soon as all the documents are signed. They just want to make it clear to the client that KPMG is not taking on the legislative risk associated w/ the client's investment in the strategy. This is clear in our engagement letter, so now we are also making it clear w/ respect to the opinions. KPMG is done once the opinion letter is written and we don't have to give our fee back due to legislative changes beyond our control.

ATTORNEY REACTIONS TO BLIPS – Purpose, there are a group of attorneys telling our clients that the strategy is NOT more likely than not. We just want to gather ammo to combat that situation if it ever builds to that extent. We are negligent if no one else will come to the same opinion that we do. So Jeff just wanted to be prepared if it ever comes to it. The law firm did put their concern in writing. So question, how can the client reasonably rely on ours if their other advisor advised against it.

CA K-1s – CA filing requirement for nonresidents? They allocated expenses. Currency losses, expenses, interest add-back for AMT. If all portfolio income, then taxed to state of residency, so would probably not have a CA filing requirement. No one has asked Presidio why they did that yet. The hedge funds are managed from CA, but physical situs of the assets are in NY. CA pship so Presidio needs to file a CA tax return. None of the 1065s have actually been filed yet per Carol's TC w/ Steven Buss. Carol will take on the responsibility of looking at why some is being reported as CA source.

# 3-20 Western Area IS call

BLIPS – Amir says that they are dragging their feet on anything less than $75 mil. Dale thinks that Presidio is holding out for larger deals.

GRANDFATHERED BLIPS – 7 slots as of last Friday; various deals in the works which may use up those 7 slots. Are we comfortable doing last year's deal? Feel better waiting from a legislative risk perspective, but then again, we aren't guaranteed to have a new product.

K-1s – We haven't seen anything in the West (Robin has some but that is it). Dale will call Kerry on when they will come out. Kerry is doing 4 a day so maybe we'll get ours by the end of the week.

BLIPS OPINIONS – Deal on time hitting our contracts? Dennis recovered some funds related to the implementation works. Those funds were allocated amongst the West and Southwest. Dennis is going to use the funds to offset some of Randy's development time rather than against the contracts. Jeff says we will probably still get hit for about $15,000 per opinion letter. Dennis will go back to Jeff to talk about reallocating time.

SIGNING BLIPS OPINIONS – signing the opinion letter KPMG rather than partner name. Delap says it has been the practice to have the partners sign their own names for the firm. Question: practice or policy? Dale will look at the old OPIS Brown & Wood opinion letters to see if RJ signed it by firm name or his name. Cir. 230 – does it deal w/ who signs the opinion letter?

GRANDFATHERED BLIPS – 7 slots as of last Friday; various deals in the works which may use up those 7 slots.

OPTIONS STRATEGY – Deke thinks they are there as far as getting to more likely than not. Question, is there a market since the companies need to amend their plans? Why does this make business sense? They made progress. One of the Miami law firms is writing an opinion letter that says this does NOT trigger income. We will have more likely than not on a technical side, the issue now becomes whether we can get there from an economics and marketing side. No sense on how many of these that Anderson has sold.

MISCELLANEOUS – Not really selling anything else. Remember to update Penelope on any OMS prospects.

NEW PRODUCTS – They are having a meeting tomorrow to talk about the economics of the new BLIPS. They need to convince Brockway tomorrow. They are there technically, but not yet economically. It's not guaranteed that this will happen. It may come down to Stein saying that from a business perspective, we ARE going to do it. We haven't been hung up on the technical side on any of the new products, just on the economics of the deals. Presidio has NOT started changing the paperwork yet. We probably won't have a good product out until mid-summer.

TRACT – Brockway still hasn't made up his mind on Tier 3. Mark Watson doesn't see it as a big deal because the regs aren't finaled. But our clients want to know now. It just isn't a priority for WNT right now. Dale is going to show everything as Tier 3. The issue is really how to report it next year. It is in the business plan to final the regs this year, but who knows if it will happen. NY state bar is having some meeting so this may be one way to get public support w/o drawing attention. Maybe we can get the CA state bar to do the same.

IDV – SD has some possibilities, but nothing "sold"

PREFERRED STOCK BAIL-OUT/CAPS – same outcome as CREW-P so if it is still OK in light of the corporate tax shelter regs, then sell those rather than CREW-P.

3-27 IS call

Matching issues: Tracy Stone talked to the TCS folks. The IRS does have the capability to match 1099s w/ 1065, but it has been low on their priority due to resource allocation issues. TCS thinks that even if we get matching notices, the Service would like to dispose of these issues as soon as possible so if you just tell them it's a single member LLC, the issue would just go away. Ignoring the 1099 matching issue is probably better than filing a 1065 and bringing attention to it anyways.

CA reporting requirements for nonresidents: Steven Buss looked carefully at the information reporting issue and what should be CA source. Presidio firmly believes that this is the way it should be.

CA NR reporting requirements: Robin Paule had a response to Richard Bloom's email and she will forward it to the group. There is no need to file a CA indiv. return for the CA nonresidents. Dale's group had researched the issue and concluded that the single member LLC filing requirement applies only if you are in a trade or business. We determined it was not in a trade or business so had no CA filing requirement – follow the logic through to the individual, i.e., if the disregarded entity does need to file, then the member doesn't need to file. Besides, only deductions/expenses are being passed through to the members so that won't give rise to a filing requirement for the CA NR. Robin is not sure why they would pass the expenses through but not the income. Carol is not filing CA tax returns for her NR people. Rich Bloom was wondering if, since expenses are passed through, if they can use the expenses to offset other CA income.

Emails w/ lists of BLIPS clients: e.g., Angie's email on the 988 election participants – don't keep that in the files, it's a roadmap for the IRS

1099s: Anyone get corrected 1099s? DB had issued 1 1099 in multi-party deals, then corrected it for the various parties in the multi-party deals. The lead name should get 2 1099s, (1) big dividend number but no proceeds from sale of securities (2) small dividend amount – this belongs to all the parties, but they lumped it in the lead person's 1099 since it was small, this 2nd 1099 shows the proceeds from sale. Just be aware that for the multi-party deals, the lead person will get 2 1099s. The corrected 1099s amounts do not match the original 1099s. They accrued the Jan. payment and included it in the prior year 1099 – they aren't sure why some banks do this.

Opinions: ½ in WNT being reviewed, ½ rep. letters are out. They are circulating 10-20 a day. On track to have them all in circulation by 3/30.

> NatWest Rep: Mark had a Q. on this w/ respect to the Abrahms deal. Jeff is aware and is addressing it. Will soon to be resolved.

Carol got a draft for a client who's leaving town. The clients are pushing back on some of the language. Specifically, the language about the 7 year investment and SO much emphasis on the 7 year thing. The opinion does not address whether the 60 days is more likely than not sufficient. Jeff says they discussed at length the period of time necessary to get to a more likely than not opinion. What counts here is their expectation when they entered into the transaction. Carol: nothing says we are comfortable w/ it being 60 days. Jeff: the fact that we are issuing the opinion infers that 60 days is OK.

Brown & Wood opinion, process is the same. As soon as we finalize ours, they use the facts section of ours and do theirs, usually 10 days after ours is finaled.

Can the client get copies of the signed bank and Presidio reps? No. We do have copies of it (or will get copies), but the copies won't be released to the client. They are still tinkering w/ 2 words on those reps but they should get there soon.

Q. if Brown & Wood can't issue by 4/15, is that a filing problem for the client? No. It goes to the mindset of the client. Besides, they will have our opinion letter and know that Brown & Wood's is in the process of generating theirs. Not having Brown & Wood's in hand wouldn't change Jeff's opinion. If the clients have an issue w/ not having the Brown & Wood opinion before 4/15, let Jeff know and they can put it on the top of the Brown & Wood priority list. The Brown & Wood opinion letter is much easier than ours, we did all the hard work on the letter.

Management fees on the K-1s: Any support for capitalizing them? The firm is not giving specific guidance on how to report this. Most people are capitalizing all of it. Look at the WNT memorandum – Presidio compensation for arranging the overall investment program so capitalizable. Jeff's recollection is that the weight of the authority leans towards capitalizing all, i.e., mostly for acquisition of the assets. Facts: one time hit on entering the transaction. Same fee whether in it for 2 months or 7 years so more like for the acquisition of the assets as opposed to "management."

988 loss: Can it be a deduction for investment interest expense. We had early on decided it was non-business, not business. But haven't addressed whether investment interest expense. Carol was looking for c/o. Justin Ransome will look into it along w/ Peter Prescott. If they come to a conclusion, then they will circulate it to everyone.

OPIS: should all be done by the end of the week.

Tax Solutions Call later today: S corp. strategy. 2-3 year tax holiday w/ respect to 90% of the S corp. income. Park newly created shares w/ special charity that doesn't pay UBIT. At the end of the 2-3 years, something happens (couldn't catch all they said), the charity redeems their shares, the existing shareholders then have the option of reinvesting or getting out. If get out, get out at capital gain. This is just like the old RESOP strategy, but using a charity so none of the old comments. This is really a shifting of the S corp. earnings. Focus on clients who would reinvest the earnings rather than pull it out. The charity will have to be either a charity w/ UBIT NOLs or an entity that is not subject to UBIT, e.g., municipalities. We have identified some of these non-profits. They already some of these deals on the West coast. Target size: net income each year of $5 mil. or more. KPMG fee: 10% of the estimated annual income. Opinion letter is more likely than not currently. Pending Delap final OK. This originated from an FTS partner on the West coast (former D&T person). This is revenue to the implementers, w/ cross-sell credit to the referrerals. The charity gets the value when it redeems the stock. It's a RESOP w/ a charitable partnership and a S corp.

NQSO Strategy: Moving forward. Dan Vail is currently revising the whitepaper. They have resolved a lot of the issues. It has gotten favorable responses.

REACT: still in DPP. Larry wants to run it by Brockway first.

## 4-3 IS call

Filing tax returns w/ estimates: We are about through w/ the opinion writing process but may be missing some K-1 info., Q., file using estimated numbers? Jeff thinks yes, file w/ T/R w/ estimates; preferably conservative estimates. We are OK w/ avoiding penalties based on the more likely than not opinion conclusion on the originally filed return. What if need to amend? Not "required" to file amended return, though recommended to do so. If overly conservative and get small refund on amending, then forego filing a return. But if you are going to file an amended, consider whether you have a position to so file and whether you can sign that amended return if there have been legislative changes; see if we still have a reasonable basis for filing the return at time of amending. Penalty protection based on filing of original, not of amended.

Form 8082 (notice of inconsistent treatment) – Form is technically required, but no penalty or down-side for not filing the Form. Mark Watson thinks we meet the exceptions to filing listed in the instructions.

Carol has gotten K-1 matching notices. Per Tracy Stone, the IRS does have the capability, but not clear how big a focus it was for them – i.e., it's a low priority for them.

Legislative update; No new news. Hank guesses the Sevice continues to focus on economic liability transactions described in the Senate reports in the Fall of last year. Hank assumes that we will see a change to address the concern sooner rather than later – i.e., any time now. They haven't sorted out how much revenue they need from the trade bills. They haven't sorted what specific provisions to plug in to fund the revenue. It is likely that the contingent liability language will be inserted since it is non-controversial. Moral: file t/r sooner than later. The proposals all have a retroactive date back to October 18, 1999. The question is then the mindset at time of filing the tax returns.

Opinions: the rep. letters should be floating around. Jeff will follow up on the OPIS rep letters.

Grandfathered deals: up to 18 now. Be careful what you commit to. Lay it out and let the client decide in light of the legislative risks.

Replacement techniques: Jeff thinks that LBS/BLIPS 2000 will NOT be marketed as a KPMG more-likely-than-not strategy. We will not do this for a value added fee. Some people think it is not worth the opinion risk so maybe get a "referral" like fee. We should know soon. Mark is trying to arrange a meeting in WA first part of next week to see what is in the hopper now and whether can get to more-likely-than not on other outstanding strategies, e.g., COINS. Jeff hopes that of these others, at least one ore more will come out as something we can offer as a KPMG solution rather than a 3rd party solution. In CA, it is illegal for CPAs to get a referral fee. So then if we are getting "referral" fee, then we have to watch out for state rules.

REACT: Will get through eventually. Watson thinks Brockway is w/ us but he's still going back and forth w/ Delap.

NQSO: It needs to go through Delap again but Mark is hopeful.

TRACT Regs.: John Gardner and AICPA is sending over a letter to IRS re the 642(a)-7 regs saying they should (1) change the effective date and (2) redact the entire regs. Hopefully, this will slow the IRS down.

§988: Zysic talked to Kelliher. It looks like the 988 ordinary loss s/b included in the investment interest expense in calculating the net investment income. They will forward Peter Prescott's memo (see Keating case). This just creates a "deferral" – but on some of these deals, it could be HUGE (Robin has one w/ $9 mil. of investment interest expense). Because the 988 loss is a netting item, you can probably argue that you put it there, but not as Cap. G – but that is what the TP in the case argued, and the TP lost there. Not a lot of other cases out there.

§988 loss desciptions on the T/R: "§988 currencies" per Robin Paule. "Foreign Currency" per Catherine.

Trust audits: Carol is hearing of more audits – looking for income and gift tax audits. Per Catherine, in New Orleans, they are being pulled for audits by the fraud group – but the fraud group there has no clue about trusts. Carol's auditor says "income tax" group. SD had one audit on a lead trust but haven't heard anything since.

# 5-2-2000 IS call

**BLIPS**: Done w/ 1999 transactions and KPMG opinions. There is still one outstanding. 2000 transactions are being implemented currently. The grandfather list was closed last 9/30 but done w/ the BLIPS transactions. We are helping Brown & Wood w/ their 1999 opinions. They need the final KPMG opinion in order to use the facts section. Once finalized, B&W sends to Angie. Atlanta is keeping a copy of the B&W opinion letter in their files.

**OPIS**: There are some outstanding OPIS rep letters. Please get them in so they can finalize them

**NEW STRATEGY APPROVAL**: Three strategies REACT, Ins. Strategy, Stock option strategy. REACT is the closest to be complete. This is an enhancement to the IDV to be replacement to TRACT. 3rd party bringing us an insurance strategy for transfer tax and they are trying to get that through DPP. Then stock option strategy, Larry is looking at it.

Get a dozen partners together in one place to begin rollout process. These will all be treated as Tier 3 strategies so use non-disclosures and not distribute whitepapers en masse.

They have made progress on whether/how we will market strategies w/o a KPMG more likely than not opinion but w/ a law firm opinion. Does that make sense? Under what circumstances? How mitigate KPMG risks? There are a bundle of risks associated w/ this. First, if we can't write an opinion on it, how can we offer it to our clients? But then again, if we are going for a gain mitigation strategy and we are referring people, we should be paid for it. They are looking at whether it makes business sense. A number of people are interested in helping their clients w/ strategies, no matter who offers it. Question is, can we get paid to refer them out?

**Federal National Accounts**: Some of our PFP clients should be on that list. They are exploring whether we should apply the same concept to the PFP clients. Maybe devote more resources to those, e.g., those that would use every strategy we offer. It is still on the drawing board. If you think someone should be on the account, let Jeff know.

Q. is it a given that we will not have a gain mitigation strategy?
A. No. We will comb the market for something we can offer. They will have some kind of strategy, but the artificial gain strategies will be harder.

E&Y selling a version of the short option strategy, much like the diversified. Similar to the BEST strategy.

Nothing passed on the legislation we were worried about in April. They are playing around w/ the language. They are working w/ the exceptions that would, on its face, let these types of strategies fall through the cracks. However, the pship regulations give Treas. broad authority so it makes these types of transactions more difficult.

Everyone prefers a proprietary more likely than not strategy. REACT is getting us there.

They are still evaluating walking away from a strategy like BLIPS even though nothing is forcing us to walk away from it. Part of the problem is, e.g., when we tell clients that we do a limited number of strategies, what if we add 10 more, is that OK? The firm just wants to focus on viable strategies.

First Union has presented a Jenkins and Gilcrest transactions which is like the BEST/Diversified sort option strategy. Why Diversified rather than the Jenkins strategy? There is a big price difference. The facts are not wonderful, but the opinion is well written. Jenkins will do a 30 day transaction. Diversified 6% using financial numbers or currency or 7% if using stock options. Take into account what First Union is going to do here. In Chicago, Jenkins will do it for 3-4%. One problem with it is that no real trading goes on inside the partnership. With Diversified, they will trade. DR's client's understanding is that business purpose is that client can direct short trading. Alex Brown is doing the trades for the Jenkins

deal. They don't manage, they just do the trade. 3-4% depending on how it happens. DR's client was pitched a 5-6% fee w/ $10,000 up front with no more money until they file the tax return. Jenkins bills in December so fee in same year as the transaction so can step up basis. Jenkins deliver opinions 1/1-3/31 and if the law changes, you don't get billed. Fee a §212 deduction. Look at what First Union will do for that fee.

## 06-05-00 Western Area Conference Call

1) Can do more grandfathered BLIPS deals. Dale thinks it is because they want to accrue more revenue.
   a) Maybe liberal in the interpretation of "grandfathered"
   b) We may have Kubiak
   c) Just send Jeff and email that we talked to the client in August.
   d) Be sure client knows it is limited opportunity and critical that they do it quickly.
   e) Dale thinks bank had always had the slots, but it was coming down to Larry Delap. Larry has been overridden

2) COINS – Dale thinks this is the strategy that KPMG is not writing an opinion; just Brown & Wood.
   a) Question is, how are we going to get paid? For referral
   b) This is the Diversified deal but we aren't doing w/ Diversified. Robin Paule thinks we are doing this w/ Presidio.
   c) Difference with BLIPS in implementation was that BLIPS was in development, whereas this has already been developed.
   d) Per Robin, the scary thing is that they are throwing unrelated people together (versus in BLIPS where we tell the people that any one partner could be audited and that could lead to the others so that is why we kept groups to related people)
   e) Question, are we going to drop the minimum below $20 mil.?
   f) They are going to Dallas on Friday to discuss COINS.

3) REACT and CA law – Jack did research
   a) Under CA law, we can terminate the trust. Jack looked at the Whitepaper and thinks WNT is a little confused on the merger document. Under old common law, the legal title same as equitable title so trust ceased to exist. Here, we have income beneficiary becoming same as remainder beneficiary.
   b) Jack pulled an article where courts would terminate a trust if that is what the settlors' intent was. Here, settlor and beneficiary are the same so clear what the intent is.
   c) Jack thinks trust will terminate in CA under non-judicial procedure. Other jurisdictions, you may need to go to the courts
   d) When remainder interest purchased, no longer CRT. So what is it? He's thinking it is a grantor trust.
   e) Mark wants to make sure it is a terminating distribution. Jack's not sure why exactly.
      i) There is one PLR that says if terminating distribution, doesn't carry income from the trusts. WNT probably relying on this.
      ii) Jack is not sure if really need terminating distribution. If it is a grantor trust now, it shouldn't matter what it is.
   f) Jack will finish the whitepaper before discussing with Mark
   g) Attorney General probably won't care about the tax issues. They just want to be sure that the charity doesn't get screwed.
   h) Where do we stand on this becoming a real product?

i) Dale talked to Dan Vail
ii) Larry wanted Brockway to look at it one more time. Brockway doesn't remember looking at it. Brockway wanted some other guy to look at it also (someone new).
iii) We have Beta tests

4) TRACT
   a) No new info. on whether will get re-write on TRACT opinions. They changed the opinion letter to leave it open ended
   b) Dale is just worried about personnel constantly changing in WNT and what if someone new comes along that doesn't agree with us

5) Insurance strategy
   a) Per Robin, Lehman Brothers also has similar product
      i) For wealth transfer
      ii) Watson said this is hooked up with some other company.
      iii) We heard Heritage and Spectrum are doing this.
      iv) The Executive Compensation Group is doing this.
      v) Spectrum is working w/ Lehman Brothers in S.F.
      vi) David talked to Blattmacher about the fee problem and has some ideas he wants to run past Mark

6) SC2 (SCUBIT)
   a) Dennis is trying to figure out how to split fees between FedTax and PFP
   b) We may be dealing w/ Rich Wise and/or Tim Speiss
   c) We should do some split like CREW-P
   d) Per Alfonso, minimum fee is now $500,000 -- $5,000,000 deal. They are now concerned with how many of these deals are being done.
   e) Maguire has done $3 mil. David has 2 leads

7) CREW-P
   a) They still keep having bi-weekly calls but the firm has only sold 1 so far.

8) SLEEK – another product they are going to discuss in Dallas on Friday

9) Robin is going to have lunch w Greenberg to discuss strategies out there. Greenberg is associated w/ Schriever

**Notes – 06-12-00 IS call**

1) Tracy Stone will give us the new number going forward in an email next week
2) For incentive compensation, close some more of the grand-fathered BLIPS deals as well as sell more short-option transactions.
3) They had a meeting in Dallas w/ partners from each of the geographic areas. They discussed various strategies.
4) SOS – short option strategy. Gain mitigation. Similar to BLIPS. Contribute property subject to economic liability to a p-ship.
   a) They will use Presidio for West coast and SE
   b) The rest of the county will use an arranger, Elios (sp?) (affiliate of the Diversified group)
   c) KPMG will NOT write a more-likely than not opinion. Various law firms will write the opinion. We will still do everything as we have done in the past, but short of writing an opinion.
   d) There are approximately 3 partners in each area trained on the strategy. Take them out w/ you to a client, then next time, you can go on your own.
   e) Q. anyone issuing concurring opinion?
      i) KPMG not writing an opinion. Law firms will be writing the opinion. It can be any law firm. We just need to deem them qualified – we will have a list of previously approved firms
         (1) Brown & Wood – primarily for Presidio West coast deals
         (2) Proskauer & Rose – primarily for Elios deals (primarily East cost).
            (a) We could probably work it out if a West coast client wants them
         (3) Holland & Hart
   f) For cost, just one law firm opinion. IF client wants another opinion, then they can go get another one (approx. $50,000)
   g) Transaction costs: they are trying to get it down to 5% range –275 basis points in administrative costs and fees (1% of which is KPMG). At least 225 basis points in the short options. Fees are set w/in 25 basis points.
   h) We are going to try the approach of it being a KPMG value added strategy but not write an opinion. The market has priced our referral into the transaction.
   i) Not a referral fee. We WILL have an engagement letter with the client.
   j) Unclear if the list maintenance requirements will be required. We are not requiring confidentiality so we do not plan on registering the strategy.
      i) DPP has been keeping list of strategies just in case the list requirements do apply
      ii) In theory, since we are not writing an opinion and are not the promoters, we shouldn't be required to keep lists
   k) We intend to be paid on the front end. No requirement for our fee to be in the transaction and be at risk.
   l) Jeff's hoping that we can selling some of these before the end of the month
   m) $20 mil. is the initial benchmark. The firm will work on the amount. There is no o/s bank setting limitations on this.
   n) Competition is stiff on this. Grant Thorton has been doing this transaction. So has Jenkins & Gilcrest, ICA, E&Y, Diversified.
      i) Competition has been 4-5% -- dual pricing depending on whether ordinary or capital.
      ii) E&Y – don't know if they are writing an opinion. Charging 6%
   o) Jeff thinks that w/in 6 months, we will get a notice (like the IRS gave in BOSS) saying don't do it
   p) We just wanted to be able to sign the tax return – i.e., realistic possibility standard. Since lower risk, then lower fee.
   q) It is different to market something where we are not writing an opinion. Tell them that we are developing our own. While waiting for ours, we looked at the market and who we would feel comfortable sending our clients to so now have identified
      i) Higher quality transactions
      ii) Negotiate with all the parties to get lower transaction cost
   r) In person meeting is the best. However, since we are not writing the opinion, it will end up being the law firm deciding what they need to be convinced that the investment risks have been properly discussed.
   s) We will have something to point to say that ours IS better than the competition.
      i) DR requested a "cheat sheet"

   ii) Jeff: what we know about the competitor's offerings is hearsay. They can change their deal very rapidly so not good to put out something that is then not correct. For marketing, we have been better telling them why ours is higher quality, rather than bad mouthing someone else's
   t) With this, client will have some choice as to what they are actually investing in.
   u) OK to use w/ W-2 income? Better from cosmetic view point as capital loss, but technically, can generate ordinary loss.
   v) There are rumors that Jenkins & Gilcrest, they start at the 4-5% range, then "bonus" of 1-2% at the eud. We have no interest in doing that. They are starting at 2x what we are
   w) No price differential for ordinary versus capital.
   x) There is disguised sale issues as in BLIPS
   y) Rely on the investment advisor. Manage expectations downward
   z) To capitalize, maybe contribute low basis stock to the investment partnership. We haven't figured out whether we want to suggest that. Questionable whether want to put that stock at risk.
   aa) Having an IRS notice will not impede us from signing a return nor from stopping the opinion writers from writing their opinion. But they ARE taking a legislative risk here. Clients must be clear that this is THEIR risk and not KPMG's risk. If KPMG does take on that risk, then we need to be compeusated for it.
5) Recommence Monday night conference calls. There are a lot of new products coming up so we will have a lot to talk about in near future
   a) Option diversification vehicle.
   b) REACT, not far from approval
   c) Split dollar strategy (SPSD) – close to approval. We are trying to figure out how we are going to get paid.
   d) SLEAK (sp?) strategy – close to approval, it's at DPP now. John Schrier (sp?). It is essentially a swap transaction. Trade your publicly traded stock for some other position. Similar to prepaid forward, but rather than cash, get designated stock with some rate of return. At end of swap period, deliver low basis stock (recognize the gain) or cash settle in which case, you continue your deferral.
      i) Right now, they are talking about minimums lower than what we are used to, e.g., maybe $3 mil.
      ii) The IS leadership group will have to decide what segment of the market we want to deal with.
      iii) No one else out there has something like this strategy that Jeff knows of
6) < $20 mil and can get it in right away, then call Jeff and they can work something out

**Notes: 06-12-00 Western Area IS call**

1) IDV and real estate and recapture
   a) Soln: installment sale. Have first year payment = to full depreciation recapture amount, that year, it's not a CRT. Then after that, back to CRT
   b) Soln: separate contract for depreciable assets
   c) Soln: specially allocate UBTI to GP. (but we usually don't do this)
2) Taycbis BLIPS
   a) Just a question of deal size now (somewhere between $50 mil. and $200 mil.)
3) Deke will get an answer from his grand-fathered deal today
4) COINS - SOS
   a) Get specialized deal? WNT very reluctant to do products now so hesitant to do customized solutions. Almost better to just be the 3rd party
   b) The turn around time for us to have people commit is so short that can't crank one of these out.
   c) Randy is unsure whether people are willing to pay the 100 basis points for us to just lead them to the solution.
   d) Maybe better strategy is to take less money, but take the money and put it into the law firm opinions to get a better opinion.
   e) Maybe take the short option strategy and customize the solution. Usually customized solutions are for $150 mil. and above. Always better to be able to point to what you contributed to it.
   f) A lot of our larger clients won't want the Kmart strategy which is what this is. The weakness is that it is mass marketed. So would be better if we could customize it. Also, if larger deal, they bring in gatekeepers that will blow the whistle that this has been out for last couple of years.
   g) Marketing:
      i) What is our story? Hoping to have a proprietary product but here is potential solutiou in the meantime.
      ii) We worked with the provider to improve the product. We are only getting 1%
      iii) We can't devote the time to write an opinion. We aren't charging quite as much as we normally would. Good to get Brown & Wood in on the conversation of the value of an opinion.
         (1) Avoid penalties with a well reasoned opinion you can rely on. We don't want to lead the client to think that we are fully behind their opinion.
      iv) (This might be good for the lower end. But, for the higher end, wait for a crafty solution just for them and then incorporate the short-option strategy)
      v) We are solely Presidio out here in the West
      vi) Dale will try to make sure that Carl is on the call next week. Carl has sold a number of these quite successfully. Robin doesn't think any client ever asked why we get 1%. On the old deals, Diversified paid us. However, on these, the client needs to pay us directly. Most clients don't ask for that much detail. The cost is the cost for most of their clients.
      vii) The engagement letter that we are going to have them sign will highlight our minimal participation in these.
      viii) Compliment their existing portfolio.
5) Customized solutions: If they have gain, we can customize solution that is tailored to their specific situation. The primary emphasis is the investment side. E.g., investment program that compliments their current portfolio. Within the investment strategy, build in a tax ploy to shelter gain. The preferred way is to bring Presidio in on the loop. But if HUGE deal, there may be other investment advisors on the scene that you may be forced to work with. If one of these outsiders, then you will usnally have to bring a Presidio type firm in to help implement. Better if can bring them in on the front end. The more we do it, the better feel we have for how long one of these will take.
      i) Can use SOS type structure
      ii) Can use something like a §301 type structure.
      iii) Can use the related party rules under §267
      iv) Once things settle down, re-introduce premium loan structure.
   b) Minimum size, $100 mil.
   c) They are currently working on 3 customized solutions, one for $100, one for $200 and one between $300-400 mil.
   d) If have one of these, bring Randy in. Also, getting someone like Presidio in early is good.
   e) They are working on a write up to disseminate to the rest of us

{FILENAME \p}

6) Per Dennis: there is still a big push to get more money in between now and June 30 to meet forecasted plans – they are talking about another $9 mil. of revenue. Emphasis is on accelerating to recognize all the income as possible in order to qualify for every possible incentive bonus.
   a) The Tayebis are a maybe and we will know by Wed.
   b) Also, Dennis Kobiak. Finally sold his business for $60 mil. and David is meeting with them on Wed.
   c) Short-against the box. Randy has an article on this. It is a good strategy.
      i) Robin has some potentials for a grand-fathered short-against the box. Randy has a great solution for that. But, their problem is that it inside and S corp and so they have a §311(b) problem
      ii) David has a couple of people who have grand-fathered shorts against the box
7) Everyone think of marketing, we will try to get Carl on the call next week to give us war stories
8) Dennis is trying to get a Western area IS meeting going. He will send info. later. In July, maybe the week before Las Vegas.

**Notes: 06-19-00 Western Area IS call**

1) (5 minutes late)
2) Option diversification vehicle (ODV)
   a) Marketing – watch out because we aren't requiring non-disclosures so it can be stolen by people very easily
      i) Start with executives of our audit clients
      ii) Companies with plans that allow transfer of options. No matter what, it will require the amending of the plan.
      iii) They had previously thought about offering it only to our audit executives.
      iv) Vested options only.
   b) They are working on the toolkit
   c) We are in pre-marketing phase again.
   d) Need a company that allows for transfer of options amongst family members. If it doesn't so allow, then need to amend the plan. Transfer vested nonqualified options to pship for nonrecourse note. The pship members are the spouse and independent GP. The independent GP will be trust fbo kids, trustee is an independent person.
      i) Need someone who is married.
      ii) Needs to nonqualified vested options.
      iii) Plan must allow transfers else be in position to get the plan transferred.
   e) Benefit – deferral only. The nonrecourse note will be interest only. Sale for the note = ordinary income. Pship can exercise option, sell stocks, invest in diversified portfolio
   f) We are still looking for a beta test. If find one, call Deke
   g) Also working on getting sample documents on everything.
   h) Term sheet from Deutsche Bank to support FMV of note = FMV of option.
   i) If don't use the term sheet, Larry Delap is requiring at least 2 appraisals. KPMG cannot do the appraisal. Key to this transaction is the need to be able to show that sold options for FMV. No good §83 event if no sale for FMV. Not having 2 appraisals say the same thing would be problematic
   j) Issues:
      i) prohibition from pship making cash distributions.
      ii) Pship cannot borrow money w/o permission.
      iii) Guarantee by the LP of some portion of the debt
   k) Once have these three, the bank will give a term sheet of what they would charge
   l) Want to argue loan = FMV so have to look at arm's length
   m) Note term = 10 year note
   n) Economics are good on this.
      i) If ran illustration, e.g., 10% return (2% current, 8% appreciation, 25% turnover, sell at end of 10 year period) – net benefit is 30% during that period of time.
   o) As get closer, they will pass the material out and go over it again.
   p) Fee of 4%. On $10 mil. deal, fee is $400,000
   q) This solution will compete with the exchange funds. They will only put a portion of their options in this solution. It's not something they should put everything in.
   r) Minimum fee of $200,000 (because of all the appraisals, etc.)
   s) Corporate accounting issues – amending plan to allow transfer to family members will not result in new measurement date for audit
   t) Payroll issues: pship will notify company whenever it makes a distribution so the company knows when to deduct it
   u) Interest on the note – not compensation income. Interest paid by the company would have been compensation, but once sell the property, §83 makes it theirs. Interest income thus offset by interest deduction (assuming a 99%/1% split).
   v) Risk from divorce standpoint is that as there is appreciation, you just gave it to your spouse.
   w) Would want separate property going in and have spouses have sufficient other assets for capital contribution plus fund guarantee.

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x) Executive can't be partner in the partnership. This is the arm's length issue.
   i) Heard that AA allows executive to be a partner in the pship
   ii) Heard AA uses an off-shore trust
y) If single executive, then it is problematic.
z) Spouse will guarantee the note
aa) No confidentiality agreement because we have to tell the company what are doing. Not a corporate tax shelter, but we probably can't ask the company to sign a nondisclosure (we just don't think they will sign it.
bb) Point of contact – payroll, teach them not to withhold
cc) There will be a PPT slide presentation that will be distributed. They are waiting for software to be completed in order to insert economic example into the presentation.
dd) No one has actually pitched it to anybody yet. We couldn't pitch it before.

3) SLKE
   a) Concern over how fast this will get out in the field (TRACT disaster all over again)
   b) Best if older client with concentrated position where in the old days, we would have used a short against the box?
   c) Video conference, June 28, noon PST
   d) Easy to say cash settle – but where do you get the money?
4) SOS
   a) Carl was going to talk about marketing (but he is in Chicago). We will try to get him next week. Carl thinks this is easy to market and KPMG not issuing an opinion hasn't been a problem.
   b) Deke has pitched it a couple of times
   c) We will get more comments about us not writing an opinion where we have an outside advisor on the scene. Try to not have an outside advisor there.
   d) We get 1% for this when we get 1 ¼ % when we do write an opinion.
5) National IS budget.
   a) How much do we think we can do in the Western area? Revenue goals? Email Dale the numbers.
   b) Jeff through out $38 mil. around the nation.
   c) But when Stein was on the phone, the $38 mil. is only if we don't have a BLIPS type solution.
   d) Through 11th period, West area has done $22.2 mil. of total $44 (?) mil. for the nation.
6)

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**Notes: 06-26-00 IS call**

1) ODV and SLEEK strategies now officially approved and will be rolled out on the AMP call tonight.
   a) SLEEK training later this week
2) Short Option Strategy
   a) They have made small changes to the engagement letter. Download new one from the toolkit. The latest engagement letter will always be in the toolkit
   b) There is no new penalty memo. There is a possibility that if there are changes on the corporate side, the individual penalty memo will also be changed
   c) OK if the penalty memo is issued as a letter rather than memo.
   d) Q. does the law firm need to be involved in our meetings with client? A. Yes, in some way. But wait until it's truly a "go"
   e) For Helios deals, do not represent that Proskauer "will" be writing the opinion. Can say Holland & Hart (Bruce Lemon – Salt Lake City) or Brown & Wood may write the opinion letter
   f) Presidio – not ready to go even though some of us have engagement letters. They will have the proper documentation in the next couple of weeks.
   g) Jeff has circulated a draft power point presentation (similar to the BLIPS presentation). He will send the revised draft (after he gets comments) to DPP in a couple of days.
   h) Send EIF with pre-engagement letter. Complete the rest of the information when get actual engagement letter
   i) The letter says client should seek independent investment, tax, legal advice – "tax" just means someone to write the opinion. One law firm (Holland & Hart, Brown & Wood) can suffice for the tax and the legal. Can offer to talk to the client's own counsel, but you would waste a lot of time and money.
3) Corporate transactions
   a) List keeping requirements
   b) We are not keeping lists. Not required where only doing individuals
   c) Helios and Presidio have both represeuted that they are NOT keeping lists
   d) Not necessary to maintain lists, even if Helios or Presidio is out presenting this to corporations. As long as WE are not out there presenting it to corporatious.
   e) If we do market it to corporations, we would be required to maintain list of corporate and individuals we market it to.
   f) Do NOT introduce this to corporate clients at this time. But not a problem as most corporate clients are interested in strategies where they get a KPMG opinion.
   g) If very large (min. $100 mil.) then may want to talk about possibly offering to corporations
   h) Someone out there has a corporate version.
4) Leveraged life insurance product
   a) Doug is taking the lead on this
   b) WNT is comfortable w/ the technical issues
   c) Problem is fees and independence.
5) IDV w/ Twist
   a) New technical hurdles that has made it doubtful whether can get that into the marketplace
   b) Probably looking at hiring outside counsel on this. The issue is more property and trust law issues than tax issues. Don't know how long it take to get outside counsel.
   c) Issue: is it feasible to transfer a remainder interest where the document says the remainder interest MUST go to a charity.
6) Nondisclosure agreements
   a) There is currently a debate on whether we should/can use them.
   b) It at least attempts to protect our intellectual property; slows down the spread of our strategies.
   c) Clients like the idea that everyone signs nondisclosures so that it won't show up on the Wall Street Journal.
   d) Downside: if someone shows it to a corporation, then it screws it up for all our clients.
   e) Use where we can
7) Target lists
   a) Is it better to use lists or go through networks? Is it worth it to spend the time and money to get the lists?
   b) Some feel that we are pretty much aware of where we are in our own markets.

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c) Some feel that lists are often not accurate.

8) Revenue generation credit for sales
   a) In the past, where Fed Tax partner makes an introduction, how much teamwork generation credit do they get? A little or a lot?
   b) Most have been very generous in allocating the credit in hopes of getting more transactions. But does that make it look like the Fed Tax partners are doing all the work to generate these sales?
   c) Minimum = 25% credit for introdnction.
   d) Propose some approach/procednre where local partners don't get pressured to give more credit than due.
   e) The same approach should be consistently applied within the PFP practice, e.g., PFP partner introduces to an IS partner. The IS partner needs to be the engagement partner. Q. so what's in it for the PFP partner? The other partner should get the revenne generation credit.
   f) This hasn't been consistent as between the different areas.
   g) The introducing partner should get teamwork revenue credit, the IS partner gets the revenue.
   h) There has been problems with the revenne credit not reaching the partner scorecards.
      i) Shonld go to area PIC then to Bob Wells for posting.
      ii) Rosenthal shonld have forwarded it to Wells
   i) If fed tax partners spend time selling these things, where should they charge their time? None, no place to charge time when marketing Fed Tax products so why should they have a place to charge their time for a PFP product; too mnch "dry" general marketing time out there.
   j) We are seeing revenue generation credit being disconnted because people are being overly generous – revenne generation not as highly regarded as revenue management credit

9) FY 2001 – they are developing their plan
   a) There is a conf. call in next day or two with the operating committee.
   b) The IS nnmbers for FY 2000 probably going to come in at $68 mil. (plan was $35).
   c) Plan for next year probably around $38 mil.
   d) Stay tuned, they will inform people when finalized.

10) Area leaders have anything to report (new business/other developments)?
   a) Tracy – everything on tract. Short option strategy may have potential in S corp arena as conversion and deferral strategy. As long as not sheltering bnilt-in gains tax, not a "corporate" structure.
      i) Deke has done it where couldn't do it at the partner level so had to do it at the partnership level
      ii) Opinion writers OK w/ this? Jeff will find ont on Friday.
   b) Tim Speiss (NE) – 5-6 short option presents, 3 SC2, financial buyer potentials. Had first western area meeting and will have another one soon.
      i) SC2 and estate planning potential.
         (1) If S corp. stock in ATT, how get the stock out of the intentionally defective trust after the put? They are working on a solution. The are working on getting the stock back post-put
   c) Carol Whorly (South)– have SOS presentations, have CLP prospect.
   d) Dale (West) – closing grandfather BLIPS deals, some SOS deals, Presidio going to Vegas. ODV – met with Janet Wong and _____ ; Montvale is going to come up with a good target list.
      i) Randy Bickham and Robin Panle made partner.
   e) Midwest – Met with Helios, have some SOS, some more rollouts meetings coming np. SC2 going well for them. They have also been working on the split dollar strategy and have several potentials.
   f) Deanne (NE) – a lot of SC2 activity, large potential in Richmond. Meeting w/ Helios in July.

11) SC2
   a) 2/3 premium to team that sold the engagement, 1/3 split amongst the teams that do the work.
   b) E.g., if PFP introduces the client, then PFP gets 2/3 of the fee, then if PFP participates in implementation, then PFP shares in the remaining 1/3
   c) Fed Tax is supposed to do the implementation. PFP can help out, but for the 1/3, Fed Tax is taking the lion's share of the work. They are trying to allocate some people to it so can get some specialization and efficiency.
   d) If Fed Tax does implementation smoothly, then PFP can be out doing other things. Good implementation is important so don't eat up revenne

12) ODV
   a) Joint w/ comps and benefits – no agreement as to how share fees yet.
   b) Doug is considering the alternatives there.

13) New business

a) ICV for option diversification vehicle?
   i) There is one being developed. They need to rework the fee slide before they send it back to DPP
   ii) New modeling? It's been a while since it has been updated.
      (1) Justin: is looking for the model
      (2) Dan: the module was almost completed but it was pretty much completed.
b) Grantor trusts selected for audit
   i) One of Jeff Eischeid's has been selected for audit. By a revenue agent. The letter states that the trust has been in a "REAL T" transaction and may need to be reported on a tax return. They are trying to figure out what "real T" means and they think it may be the fraud group pulling the return.
c) IDV (old traditional IDV)
   i) There should be toolkit for it in the TSA (posted in January)
   ii) No opinion template on the toolkit
   iii) They would do the opinion out of WNT based on an opinion template
   iv) There is one for IDV in addition to the 2G-IDV
   v) Sample CRUT document and Pship agreement? Tracy Stone has these.

14) No call next week (July 3). July 10 will be next call.

**Notes: 06-27-00 Western Area IS call**
Dale, Carl, Shannon

1) Short option strategy
   a) Carl thinks this is way easier to sell than BLIPS
   b) Presidio – It looks like it will be about 2 weeks before they have documents ready
   c) Helios and Diversified are one and the same
   d) Presidio and Diversified are in direct competition.
   e) There is nothing in for it for Diversified if Presidio does the deal. There is bad blood there.
   f) All they need for accrual purposes is have the money wired to an account there.
   g) We can't use Helios – they have divided the country into East (use Helios) and West (use Presidio)
   h) Jimmy Hayburn (Diversified) usually puts 6% on these deals.
   i) Presidio = 5% for everyone
   j) Opinion letter issue – Don't beg the question. The Q. will only come up w/ clients we have done products with before and/or those who are sophisticated enough to ask. Don't bring it up. Even if they ask, deflect the question.
      i) Carl's responses:
         (1) any bright tax attorney will say don't need 2 for penalty protection, 1 opinion is fine as long as the 1 opinion is from a good brand named firm. Previously, we just did overkill w/ 2 opinions
         (2) opinion is safer in files of atty than accountant (better privilege)
         (3) there is real concern that our acting in promoter and opinion writer makes it suspect
   k) Clients just like our 5% rather than 7% (if went to Jimmy directly) (or 6% if they went to John Larson directly) – we arranged the across the board price cut.
   l) In BLIPS, one investment choice. With this one, if you make the right choice, you have a 50/50 chance of making money. Plus, you have a whole menu of investment choices. Can blend the investment mix with their traditional investment portfolio.
      i) Carl looks at the tax return to see what they have been buying and selling, but Carl doesn't help them choose the right choice – just use it as a selling point.
      ii) E.g., if only ever bought domestic stock then all of a sudden you buy currency, it looks funny. With a menu, easier to blend to make it look like real investment
   m) Don't need a big loan. This is a better product.
   n) Carl has done 12 to date.
   o) Implementation: once client says "go"
      i) Pre engagement letter
      ii) Engagement letter (warning, this is even more offensive than the BLIPS engagement letter)
      iii) Presidio sends out account opening documents
         (1) Presidio – DB
      iv) Open bank account
      v) Client wires money in
      vi) 10 business day hold before can drop the money into the hedge fund – cooling off period
      vii) After the 10 day hold, they buy
      viii) Must hold the position at least 30 – 60 days (or longer if you want)

p) If want to strengthen the economics of the deal, client can put up more money, they will use the money to strengthen their chances of making money and getting more money back
   i) If put more money in, then 90% chance of making money 10% chance of losing money
q) Investment Fund – reason is diversification
r) If using Diversified, be sure your client is in a hedge fund w/ other related parties or people you know, otherwise, you are taking a risk on these strangers dropping something you don't want into the hedge fund.
s) Presidio – if $20 or more, then have your own fund. Diversified – they will do even just a $5 mil. deal.
   i) If call Jeff, won't do the $5 mil. If call Jimmy directly, then Jimmy will do a $5 mil. deal
   ii) Carl has done a $5 mil. deal and did several last year.
   iii) $5 mil. deal will have other people in there – you are a tag along
   iv) We do the same work, just whether we keep the money or give to someone else.
   v) Risk to us: client nailed because in an LLC with strangers that are high audit risk.
   vi) Plus, there is a syndication deal. We aren't supposed to introduce people to other people.
t) Marketing: Helios hands out a color glossy that gives away the whole transaction (investment and tax benefit all in one handout)
u) There is a whitepaper out there on this strategy
v) Technically, identical to BLIPS
w) Structurally, depends on whether you are bearish or bullish depending (either calls or puts)

2) Other one time loss generators
   a) Contact David Greenberg for one time hits
      i) Greenberg and John Shrier came out of Deloitte.
      ii) Greenberg joined FedTax group, Shrier went to IS
      iii) Greenberg hired to come up with products under $1 mil. – he's done a couple of $999,999 deals.
   b) Shrier
      i) Generate personal NOLs
3) PFP meeting in Vegas
   a) Dale is going to try to get Kerry or Amir there
   b) Nothing planned for dinner right now so maybe do spin out at dinner time on Friday
4) Guam trust play
   a) Peddled by Grant Thorton
   b) Set it up, then 3 months later, bring the cash back on shore w/o tax consequences due to the treaty w/ Guam
   c) Have to pay federal tax and hope to get the money back. Guam government has to rebate your taxes so have to trust that Guam will rebate your taxes.
   d) Have to cut a check initially
   e) This is being heavily marketed so it's a matter of time before the IRS shuts this down.
   f) PWC got killed and had to pull out of the market because they got busted
5) Leads
   a) Will go and present to 3rd parties, e.g., Goldman Sachs. We aren't using nondisclosures.
   b) Carl will show brokers the deal – doesn't give away the meet until necessary.

**Notes: 07-10-00 IS call**

1) Short option strategy
   a) We are dealing w/ competition as it arises on a case by case basis. Most of our clients have a clear preference to stay with us even though others are also showing them the same strategy. This seems to be the case even though the competitors have been reducing their fee below our fees
   b) Engagement information form (EIF) (name, address of tax payer) – in case have to comply with the listing requirement on tax shelters. Needs to be competed when have signed engagement letter (not pre-engagement letter).
      i) Only required for engagements accepted after Feb. 8, 2000
   c) Need standard terms and conditions addendum to our engagement letter – it incorporates much of the same as we had for BLIPS. Early adoption is suggested for the SOS but not yet "required." Larry says we will re-visit the issue in September.
   d) 25 basis points, how invested by Helios?
      i) There has been concern w/ the Helios pricing and communication has not been good.
      ii) Helios fee structure is still 25 basis points higher than the Presidio deals; the fee cost is 275 basis in Presidio, 300 b.p. in Helios.
      iii) The total investment – should put at least 200 b.p. in the cost of the option itself.
      iv) The more money client puts into the investment partnership, then the greater the possibility of having the deal stand up at the end of the day.
      v) Presidio will make additional investments in line with the options so total deal = 5%
      vi) Helios hasn't made that leap yet so need another 25 b.p. Jeff is going to encourage them to do the same as Presidio.
      vii) Brown & Wood will give opinion even if no additional money invested. But, better profit motive argument if have additional funds in there.
   e) Helios has been showing a variety of different "structures"
      i) E.g., contribute LLC to pship versus stock into the pship.
      ii) They have a meeting set up in the next week or so to talk about the various structures
   f) Rep letters – e.g., sample reps we gave out for BLPS
      i) Jeff will try to get a sample rep letter for people's use.
      ii) Mike has one from RJ
      iii) Jeff will post it after getting RJ's approval
   g) Capitalization of fees
      i) Presidio/Helios fees capitalized.
      ii) KPMG fees is more based on what we have done to generate the fees (e.g., capitalize versus sec. 212)
      iii) Be careful when sending out the engagement letters. Be sure you state that we are NOT preparing tax returns in this
         (1) If you are preparing tax returns, then that portion would be 212 expense.
   h) Tax preparation of these strategies
      i) Need to be clear where the IS team responsibility begins and ends
   i) Opinion letter timing
      i) Brown & Wood would like to start writing shortly after trade begins.
      ii) They have gotten push back on getting opinion now rather than closer to when they prepare their income tax returns. If run into this, notify Brown & Wood in advance.
      iii)

2) SELS
   a) Strategy akin to SLEEK – diversification transaction for someone not yet monetized appreciated stock position.
   b) Create liquidity w/ gain recognition 2-3 years down the road.
   c) If this works, then couple of advantages SLEEK not have
      i) Not SEC reportable position
      ii) Not a straddle (which would toll holding period)
   d) Down-side, expensive.
   e) Brought to us by Deutsche Bank. Sponsored by Jerry Rochal (?) – a partner who used to be w/ Sherman & Sterling, now w/ D&T
3) Grant Thorton Guam strategy
   a) Tracy Stone looking at it.
   b) Looks similar to what KPMG has been doing in Virgin Islands.
      i) A business related opportunity
      ii) Have a business you want to move there. Their incentive is to exempt 90% of the income generated after tax – tax rate goes down from 45% to 4%. Just have to establish residency there and get Virgin Islands exemption.
      iii) It takes time to meet the requirements but not hard to get it.
   c) Uses tax holiday concept
   d) Dale has contacted Guam. Guam will send a nice little booklet explaining the strategy.
   e) Put property in and get tax holiday.
   f) Competes with our diversification strategies.
   g) Unclear whether pay tax when you bring it back here.
4) Strategic planning meeting on Thursday in Dallas to get IS and National tax leaders together.
   a) They are getting ideas in on a daily basis and don't have the resources to deal with it.
5) Option Diversification Strategy
   a) Article in the July issue of Tax Advisor that describes our ODV strategy.
   b) Dan: the major difference between the article and our ODV is that the article uses the installment sale method. Gary Cvach thought installment method wouldn't apply to this transaction as sec. 83 trumps 453; they are going to verify that. Article is also contemplating a balloon payment of principal at the end of 10 years.
   c) It does expose the strategy.
   d) On pricing, stay where we are and see what kind of pushback we get.
6) SC2 and possible estate tax play
   a) Tim Speiss and Carol Whorly (Pamela & Gary Powell)
   b) Children that own via trust part of the S corp along w/ the parents. Any wealth shift play?
   c) Thinking of transferring both warrants and non-voting trust.
   d) Trying to see if there is some play based on discounts and values
   e) Need to look to see if prudent person would exercise/not exercise the warrants.
   f) They are going to get SC2 going then get the valuation people into the loop.
   g) Not selling it as a estate tax planning strategy.
   h) If implementing the strategy, look a the valuation and see if there is a wealth transfer opportunity.
7) Charitable limited partnership and NIMCRUT

a) Carol: Something Arthur Anderson is doing. Rather than 501(c)(3) charity, they are also offering to do it with a charitable remainder trust. Probably want a Flip-CRUT or NIMCRUT
b) Based on preliminary conversations, it looks like it works. Does not appear to be a self-dealing problem.
c) Q. can you do it w/ a private foundation? Yes, but lower deduction due to basis limitations.
d) Watch out for self-dealing on the redemption
e) Not self-dealing because of % owned

8) REACT
   a) We have retained Jonathan Blauchmacher to look at the state issues
   b) He estimates getting an answer to us in the next 2 weeks. He did ask whether we had particular states in mind. States that it would NOT work in is NY, CA, NJ, RI
   c) He does think Alaska would work. But then need trustee to reside there. (We don't have to hire his brother who resides in Alaska and does this kind of work)
   d) Why Alaska better than NY or CA?
      i) NY has registration requirements w/ attorney general when you have a charitable trust. He understood there were similar hurdles in other jurisdictions.
      ii) In Alaska, can be deemed to be Alaska situs just based on trustee being there and having some administration there.
      iii) There are other states, but he would have to look at that state
      iv) He sounded confident that CA wouldn't work.
   e) Ask him to look at CA and Delaware (easy to explain Delaware to clients)
   f) In TX, attorneys thought you needed non-independent trustee.
   g) Blauchmacher says he has done this before and can get the research to us pretty soon. He's actually gotten court approval for some of his deals. He seems pretty confident we CAN get there.

9) Private split dollar
   a) David Zecky (?) is spearheading this.
   b) Zecky has put together a memo on the fee structure for Spectrum to review
   c) We would be paid a flat fee for our dedication of resources to the strategy. AS we see how much volume based on client interest, we would revisit the financial analysis once very 3 months to see if we need to modify.
   d) Larry Delap has OKed it. It is now w/ DPP-assurance
   e) We have talked to our o/s insurance atty on this. They will run this by her again.
   f) It's looking like $2 mil. for a year.

10) Pricing on SLEEK
   a) No new information.

**Notes: 07-24-00 IS call**

1) Short Option Strategy
   a) They had meeting on Wed. w/ the Brown & Wood people (RJ Ruble), Tracy, Rich Blumenreich to talk about the SOS variations.
   b) 2 categories:
      i) Client contributes additional assets to the investment fund; e.g., LT holding period stock, then at termination, have that asset be distributed back to the contributing investor – LT asset w/ high basis so have LT loss so no matching problem of ST losses w/ LT gain.
         (1) Both Brown & Wood and KPMG have determined that cannot get LTCL from this. There are step transaction and pship anti-abuse provisions to prevent this.
         (2) Won't get a more likely than not on this
         (3) Q. can you be redeemed out? YES. OK w/ the investor requesting that a number of different securities be distributed at time to get out of the investment pship. E.g., OK if investor asks for $100,000 cash, $300,000 of stock, $300,000 Euros. The fund shouldn't buy these immediately before distribution. The fund should have these in mind before distribution time.
            (a) E.g., for BLIPS, we needed to give them 10 days notice so they have time to buy the assets and hold them for some period of time so they are truly the "tax owner" of the property.
      ii) Client contributes the stock to be sold in the pship. Have a high basis in the pship, then sell w/ little no gain or loss.
         (1) Tax exposure: created STCG out of what was otherwise LTCG. Due to new holding period rules w/ respect to pship interests.
            (a) Pship interest holding periods are bi-furcated: LT for the contributed stock and ST for the options.
            (b) Now, 2 risks, (1) not get loss and (2) not get holding period.
      iii) Drop high basis assets into S corp. so that the gain is being offset by a loss inside the S corp.
         (1) They need to do more work on this. Brown & Wood and KPMG are comfortable w/ this from a pure tax perspective. However, they aren't comfortable w/ the presentation perspective yet.
         (2) Jeff isn't sure they will get to a place that is better from a cosmetic point of view. But haven't "lost" anything either.
         (3) They CAN do this
         (4) Different if contribute to C Corp – don't do this variation. While good 351, any time we have corporate participation, then registration for tax shelter and maintaining investor lists is mandatory – would have the maintain the list for both the corporate participants AND individual participants.
            (a) We want to stay away from having to maintain lists – we have represented to some individuals that lists will NOT be maintained.
            (b) S corp. is not considered a "corporation" cuz no corp. level tax being sheltered. If had built-in-gain in the S corp then would fall into the C corp. camp. As long as everything flows through, then S corp. not subject to the tax shelter registration rules.

(c) Stay away from the C corps.

c) We are still trying to sort through what we want to do w/ non-disclosures w/ respect to this strategy
   i) We want to use them, but we aren't comfortable w/ whether the federal tax group or some other group isn't offering this in the C corp arena.
   ii) If they are offering it to C corps AND we use non-disclosures, then it is a bad thing.
   iii) The Stratecom folks have been non-responsive so we can't be sure. But Blachmacher says no authorized C corp product using this strategy.

d) First meeting hand-outs
   i) Copies of our engagement letter so they can work through their issues w/ the indemnification and liability limitation provisions
   ii) Penalty memorandum
   iii) Representation letter they will be signing
      (1) B&W should be supplying us with this soon (Jeff has asked for a copy)
   iv) Summary of the opinion (but this is questionable – better to wait until they ask us for this.
   v) Copy of the B&W engagement letter
   vi) Some clients have asked for info. about Helios and Alpha and that they had info. packets.
      (1) Coordinate w/ area leaders. Be sure you have the most recent drafts.
      (2) DPP doesn't want 3rd party materials posted in our toolkits – they should be supplying them to our client, not us.
      (3) We should be involved in distributing them, but we shouldn't be doing the circulating

2) OMS – firm uses it to track progress on solutions
   a) Carol Zeigelman gets asked to pull OMS for higher ups.
   b) Historically, PFP has been ignoring OMS procedures.
   c) Carol is volunteering herself to complete the OMS info. if we don't have another way to get the info. into OMS.
   d) The only objection is that individual clients do not want their names used on KPMG lists – it becomes semi-public as part of our data base. If that is the case, then use a code name.
   e) No excuse for PFP to not comply w/ firm procedures.
   f) For Short Options, put on OMS directly (don't run it through Jeff like we did w/ BLIPS)

3) Carol is looking at an insider trading data base and will be using it on a trial basis. Can track individual stock and generate any type of substantive information sorted by however you would like it sorted.
   a) E.g., >$10,000, is an audit client, etc.
   b) Good software but expensive.
   c) Can also track client activity; e.g., any time an executive at Gillette exercises stock > $1 mil.

4) ODV
   a) They are almost done w/ the toolkit.
   b) Justin and Dan are finalizing some thing w/ Larry
   c) Western area is still working out a roll-out plan

5) SLEEK

   a) Spreadsheet should be available by end of the week.
   b) Q. does Larry still need to review the spreadsheet before it is distributed?
6) Leveraged split dollar
   a) Dave Zucky – Midwest is having their area conf. today.
   b) Please coordinate your activities an requests through him so he can better coordinate the insurance companies.
   c) Have his office do the spreadsheets.
   d) Tracy and Dave are supposed to talk to Larry tomorrow regarding the engagement letter. They are working on a version that would work for our audit clients.
7) REACT
   a) The guy in Blachmacher's office gave it to Blachmacher for review late last week so we should hear about it any day now
8) SELLS
   a) They had a meeting in WNT to see if all the different technical areas were comfortable with it.
   b) Rich Blumenreich and Tracy will have a call today on a few lingering questions.
   c) They are close to getting to a more likely than not level.
   d) Jeff met w/ Alvin and Jerry Rokov to think about whether it would be good to introduce a STRATIS or STRATIS type strategy in connection w/ this strategy.
9) New business, questions?

**Notes: 07-31-00 IS call**

1) SLEEK
   a) Toolkit is up
   b) WNT doing an analysis to look at the economics
   c) Shrier is putting a spreadsheet together to analyze the economics
   d) Montvale (DPP) has reviewed it. David Kahn has reviewed it. Justin wants to review the flow of things.
   e) Once approved, it will be posted in the toolkit.
   f) Dale talked to Mike Grey and Mike had an issue w/ how it is calculated. Mike didn't feel like it was comparing apples to apples. Mike was testing software sent to him last Wed.
      i) It was comparing after tax cash (do nothing) versus do something, cash settlement – assumed had cash from the settlement + cash from initial position. Problem, not both on an after tax basis
   g) Cash settle option gets LT treatment if in it for > 12 months
2) ODV
   a) Toolkit is still w/ Larry although some items may be posted
   b) Still questions on the model
   c) Minimum fee of $125,000. Designed to handle where someone wants to do an ODV but no built-in gain of $4-5 mil. When add appraisal + o/s legal fees, up to about $200,000.
3) SELLS
   a) Has WNT technical review
   b) Toolkit items need to be developed – will probably be headed by Stratecom group
   c) No full-blown whitepaper, will piggy back the Brown & Wood opinion letter
   d) PFP WNT will do an executive summary
4) REACT
   a) Tracy has heard from Blachmacher just today, they are going to try hooking back up with him
5) LPSD
   a) Dave Zucky: They have been going back and forth w/ Larry, ability to do it, structure. IT is back in Larry's court. Has given oral approval but still needs to review the Alliance forms.
   b) Approved to take it to anyone who it NOT in a position to affect an SEC registered client
   c) If running illustrations, coordinate w/ Dave
   d) Dave is trying for a roll-out conf. call w/ everyone on Thursday, 4 pm central time
   e) They have a spreadsheet and initial client form
   f) It takes about 10 days to get the illustrations from the insurance company. Then Jennifer Arps (612-205-5246) converts it into a KPMG initial client form then emails it back to the KPMG person that requested it.
6) Short Option Strategy
   a) If community property states, need to be using separate property in connection w/ the formation of the single member LLC else lose tax benefits. Brown & Wood will require a separate property rep.
   b) Brown & Wood will write the opinions after the trades are closed. Timing should be shorter than BLIPS because volume of paperwork is significantly less.

c) Brown & Wood will put together sample rep. letters for us. Presidio/Helios will pass the reps out to the client so they know what to expect.
d) For Presidio, Holland & Hart are preparing the docs. Presidio will get the EINs
e) No investment interest expense associated w/ this transaction
f) We have 2 different deal structures: Presidio and Helios.
g) On the Helios transaction, the approach to pricing is different than what Jeff is used to thinking of. E.g., if targeting a 10 mil. capital loss, 3% cost, Jeff thinks $300,000. Helios doesn't price based on the short position. Helios prices it based on the tax basis in the pship interest which is driven by the long position. Thus, in a $10 mil. transaction for them, Helios buys $10 mil. long option and sell short option for $9.8 mil. and contribute those to the pship – the fee is based on the $10 mil. long and that becomes part of your basis.
   i) Previously, Jeff thought of it as reversed.
   ii) Just be aware of this with the Helios deals
h) Exit from the program: exit before it expires. How does that effect economics?
   i) Not closed themselves out from making money.
   ii) Even though the options are digital and European, there may be a fair degree of confidence that at expiration, then the option will have value and can be closed out and settled before expiration.
   iii) Same as collar where European options.
   iv) The farther you are from maturity at time of settlement, the more speculative, the more/less value.
   v) Should have a conversation w/ the client as to when they think it will have value
   vi) We want to take them out before the options expire but we would also like the options to expire shortly after they exit.
   vii) Amir was going to make them expire at beginning of next year – but is that good to have it so far out?
   viii) When will client likely exit? After 30 days?
   ix) Since there is negative carry, most people will try to stay in the fund for as long as possible (plus good for tax). Then, have them expire early January.
   x) Helios would prefer they go for the shorter after they talk to the client about risk tolerance.
   xi) Brown & Wood has considerable flexibility on term of the option. They don't think there is a problem of buying/selling/trading the option during the term. This is really just a KPMG preference.
   xii) If economic event during holding period, e.g., deep in the money so want to cash out but not leave the investment strategy, then we have come up alternative scenarios to deal with the situation. We aren't saying that they can't get out and lock in the economic gain if that is the case.
   xiii) Client DO have to get out before they expire. Once alternative is to get out and do another one for the same amount of money (but can't do for less size)
i) Mark Watson had previously expressed how ordinary losses from foreign currency should be reported. Q. how present the ordinary loss?
   i) Jeff remembers that Mark didn't feel strongly. WNT did some work and pulled together some analogies and that was out best thinking at the time and there were flexibilities associated w/ it.

ii) Jeff would be happy to re-evaluate how we should present it
iii) Catherine ended up on the Misc. income line. Everything through Schedule E so had one net number so small by the time it got to page 1 of the return,
iv) They will make it a priority to look at this presentation.

j) Can we do thing through a revocable trust
   i) Real time trust –IRS searched property tax records for all trusts in all locations and made broad inquiry
   ii) IRS was looking for the abusive foreign trust.
   iii) Using grantor trust—use individual professional judgment as to whether it is a good thing or bad thing

k) Who should bank reference letter be addressed to?
   i) Talk to Kerry Bratton. Each deal is being separately bid w/ the banks so you can't be sure where the deal will end up.
   ii) A new bank has come in and said they will beat anybody else's price on these.

l) Engagement letter – now bcc: Tracy Stone (not Mark Watson any longer)

7) New business?

**Notes: 07-31-00 Western area IS call**

1) Future calls: 2 pm would work as long as we are off by 2:30
2) Carol Zeigelheim message on OMS
   a) Kristen Benz (SF area marketing person) is doing the OMS updates for us.
   b) Either send email that contains the info. or use the OMS form
   c) Email from Carol came out last Wed.
   d) We need to go through and clean out the old/bad stuff – hard because they were coded to hide people's identities
3) Short Option Strategy
   a) David just has Thurston. David also has another meeting w/ the Tayebis (Sean is in for sure) and a few more meetings they are wrapping up
   b) Dale has 3 of them set up w/ Amir
   c) Jack and Dennis have one small one closed $200,000 fee
   d) Robin has 4 meetings set up this week
   e) Deke and Jack met with someone who asked about who is writing an opinion letter
   f) Send Dale an email when send out engagement letter along w/ deal size
   g) Jack, Erica and _____ just sold a $20 mil. SOS
4) Leveraged split dollar
   a) David has one they are working on (Goldberg). David would be surprised if it doesn't go but we still need physicals, etc. Client initially just wants to see the smallest numbers possible. David will get in contact w/ Jennifer Arps.
5) IDV
   a) Include this on the OMS reports
6) They had an area leader call. The issues that Jeff is focusing on:
   a) Ideas on consistent pricing across the country and on strategies
      i) Dale and Jack have gone out and proposed some for 2% rather than 1.25% -- these were betas so no know knows what the right pricing was.
      ii) Maybe do a suggested retail price and see what the market will take
      iii) For REACT, David thinks 2%: 1.25% for the IDV plus .75% for the twist
         (1) Don't want to change the price from the regular IDV (since that is what they would get if things don't go well)
         (2) Price just like an IDV then get more than a pittance when they get out
      iv) If have client where it makes sense to pay a referral fee, call Dale and he will work with Jeff to make it happen – they will then see if there is a business case for paying a referral fee
         (1) They need to be performing services for it (straight referral fee is illegal)
         (2) E.g., investment advice
7) Billing description: "for professional services rendered"
8) Some people have problems getting into the tax solutions mailbox. Dale will send email to Justin
   a) BLIPS
   b) CLP
   c) CREW
   d) FLP/CRUT
   e) ODV

f) SOS
g) SLEEK
h) 2GENIDV
i) They were only giving access to partners which is why some people weren't allowed access.

9) Short option transaction
   a) Exiting the strategy – Kerry's email re if additional capital needed at end of 30 days.
   b) Amir is thinking of buying options that expire Jan 01 but Kerry's email suggests they are only buying 30 day options.
   c) Dale will clear it up w/ Kerry and send it back out to us
   d) Risk profile for the additional 50 b.p. was going to be much more conservative – the investible cash is the additional 50 b.p.
   e) Is Amir still planning on buying options that expire in Jan. in which case, you don't need to put more money in unless stay after the options expire (next January)
   f) We just want to make sure that the client does not need put more money in – if they do, then we need to let them know now, up front.
   g) Have to run the options to next year (the original long and short)
   h) The closer you get to January, if doing well, then cash out at higher amount.
   i) Client would be foolish to get out before the end of December.
   j) Digital options, because hit or miss, the bank will make you take BIG haircut until close to the expiration date. Anything can happen w/ one day to go. Waiting until last week in December would be the best for the clients.
   k) Maybe we ask if can by a 45 day option if we have a client that DOES want to get out. Maybe much cheaper to buy a 45 day contract. Maybe better economics.
   l) Shortening the option may lower the strike price.
   m) What is Amir going to characteristically going to do? If options out to January, then don't want to present it to a client that they can get out in 30 days
   n) Why are we assuming that they are getting out in 30 days? Legislative risk. Once out, then basis is locked in unless retroactive effective date.
   o) Maybe it would be better if Amir then regularly buys options that expire sooner.
   p) It may be a requirement of RJs in order to write the opinion.
   q) Dale will talk to both Amir and John about this
   r) Presidio has indicated that they will let people out at each 30 day interval if have good reason

**Notes: 08-11-00 IS Call**

1) The IRS notice takes a shot at our BLIPS and Short Option strategy.
   a) Our WNT and Tax leaders are still drafting our response
   b) This is a new direction for the IRS – talking about the grantor trust being in place. If netting, they are implying there may be criminal penalties. They are checking into this.
   c) We have transactions in a number of different stages. Last years, this year's that are complete, this year's that are in the middle, etc.
   d) The firm believes in the position it has been taking. It seems fairly remote that the firm will just walk away from the transactions.
   e) Jeff has been talkiug to the law firms involved and are in the same mode we are – try to make good on the commitment we have already made to our clients.
   f) This is just a notice, it is NOT law yet.
   g) Jeff thinks it is prudent to discontinue the short option strategy marketing until they sort out where the law firms are going to come out. Don't cancel the existing meetings which have been scheduled. This is still a good opportunity to talk to them.
      i) We have other solutions for those who haven't yet realized the gains.
   h) They will send out various requests for information for transactions which are in progress. Please be timely in our responses.
   i) Q. for clients whose transaction closed last year, should we be proactive and contact them?
      i) The firm says yes we should be pro-active. We just haven't decided the format or content of the discussion. Just don't go further than what we have already let our clients know.
      ii) There are a large number of issues that we need to sort out. Watch out for discoverable facts/statements. Need to be very thoughtful about our responses.
      iii) We have DPP, OGC, TCS, external communications group – everyone is working collaboratively to work out the issue
   j) Shooting for by next Monday as time for when everything will be laid out.
   k) In the meantime, continue w/ business as usual with the opinions and the like. There are a bunch of us w/ outstanding rep. letters. Get them signed ASAP so if we can issue an opinion out, we get it out soon.
   l) There are 2 types of transactions:
      i) Where they are in the middle of the 60 days. There is nothing frozen about these. These go on business as usual until we know otherwise.
      ii) Where they haven't wired the money yet – freeze these. First, there is the notice and going in the face of a Treasury position is not good. Second, they modified the corporate tax shelter rules to include individuals in the listing requirements for interests acquired after August 11.
         (1) We haven't sorted out what that means – what does acquired after 8/11 mean exactly?
   m) This is a sensitive matter. We need to be circumspect about what we say and who we say it to. Even this call has gotten so large to where it has become suspect.
   n) The things we discuss on these calls about these Tier 3 strategies are proprietary and it is inappropriate to discuss them out of school and provide them to outside people. We need to maintain confidentiality of the innovative strategy materials.
   o) Q. Can they write regs that deal w/ this? Do they have the authority to do so?
      i) Yes
   p) The shelter regs affect just income tax
2) Marketing
   a) Carol is in the process of purchasing a new data base. West coast is
3) Private split dollar
   a) They are going to roll it out in today's AMP meeting
   b) No audit
4) REACT
   a) Tracy has received the Delaware property law opinion and she will circle back around w/ Blachmacher to beef up the opinion. They are also working out the
5) SELLS

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   a) The STRATECOM folks in NY are working out the details and economic projections this week and should have whitepaper for submission to DPP this week
6) They are starting to focus on some new strategy
   a) Private exchange fund
   b) Private prepaid forward
   c) Charitable contribution deduction absorption
7) MIDCO
   a) Toolkit will go to DPP this week. DPP already had a copy but DPP got bogged down for other reasons. IT shouldn't take too long in the DPP process and it should be the next thing after LPSD
8) ODV
   a) Got approval of the whitepaper.
   b) Larry didn't reply to the other toolkit items.
   c) Deke wanted some other models to include state tax issues.
9) SLEEK
   a) Economic analysis – Mike Grey suggested a comparison be added to the toolkit. They will hopefully have it out by next Monday.
   b) Pricing inclusive of bank fees
10) We SHOULD be using non-disclosures
   a) The Tax shelter regs just go to list requirements on individuals but not registration requirements.
   b) Going forward, everything gets put on a list.
   c) They will tell us which ones require non-disclosures as they get rolled out.
11) Exclusivity is not same as non-disclosure
12) We may use some "spirit of the engagement" letters
13) Treasury is frustrated at their inability to uncover transactions – hence their rattling about netting on grantor trust returns. Between list keeping and registration, list keeping is more useful to them than registration.

**Notes: 08-14-00 Western area IS call**

1) BLIPS/Short option strategy
   a) They only took 10 minutes to discuss the notice issue last Friday in DC
   b) Jeff thinks they have to get there and they aren't going to just walk away like PWC did
   c) Q. for when? For all. The only ones we should be careful are the ones where they are going to fund this week. Dale thinks that we will still make good on the ones already in and those that are out.
   d) 1982 CRT notice – we still did them for a year after that. They drive a lot of people out of the marketplace just by issuing the notice.
   e) It should take them about a week to come to a full conclusion as to what will happen.
   f) Still go ahead w/ your meetings both to keep the relationship plus what if this never goes anywhere? By the time we figure it out and if it is a go, it may be too late to then schedule meetings and get them into a deal.
2) Randy Bickham was w/ RJ on Friday. His customized strategies don't use short options – maybe we can piggyback off his solution.
3) Q. Do we want to resurrect OPIS? They know about it, but they haven't done anything about it in a year.
4) Everyone has someone who is IN the 60 days right now. What do we say to those people?
   a) We asked Presidio what are the economics if they want to get out and Presidio is working on it.
   b) It would be bad for the client to back out of this now – e.g., back out as soon as there is a notice issued shows no investment purpose. IRS won't know he got in and out.
5) What's changed? It all depends on whether KPMG (for the BLIPS) and Brown & Wood would still write an opinion letter. If the answer is no, then get out and save what economics you can.
6) Tax shelter opinion letter regs
   a) Have engagement letter signed prior to Aug 11 and collected at least $1 of fees by Aug 11, then don't have to list it.
      i) Both Pobiak and Thurstou fall into this.
      ii) They are still looking into this.
   b) Currently we were keeping lists but for internal purposes only.
7) We still have others that Presidio has and the one that Randy has
8) Our ability to stay ahead of the IRS is at best, 1 year.
9) Rumor has it that another Big 5 is turning it in to the IRS as soon as they get wind of it.
10) Anybody use a grantor trust?
    a) We had grantor trusts in place, but didn't use it.
    b) Dale had some use it and outside accountants netted it.
    c) There is nothing wrong w/ using a grantor trust – just netting the ST and LT on the grantor trust return is what causes a problem.
11) REACT
    a) Tracy got letter from Blachmacher on Delaware state law issue. However, doesn't rise to level of an opinion letter so she wants him to write an opinion letter. Plus, the authority he is relying on is pretty weak.
    b) Tracy will talk to Blachmacher tomorrow. Dale and Jack are going to talk to Blachmacher to walk him through an opinion to get him comfortable w/ the legal issues.
    c) On this one, we have plenty of time left
12) EIF – if after February, fill it out.
13) Lab meeting last Friday
    a) REACT
    b) MIDCO – Justin will resend toolkit to DPP
    c) SELLS – real close on in. Q. whether it makes economic sense
    d) SLEEK – still questioning economics.
    e) Private prepaid forward – replacement for the old short against the box. Get into the same position, get rid gain on death
    f) Private exchange fund – get monetization through prepaid forward

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g) Charitable utilization strategy – use charitable deductions about to expire – works by generating AGI

14)

**Notes: 09-27-00 IS call**

1) Jeff has spent the last couple of days in NY and can give us final answers on most of the questions.
   a) Where are we? Dealing w/ Notice 2000-44. They are tracking what his prognostications have been. The WILL sign tax returns and they WILL complete the opinions on the 2000 deals.
      i) BUT, there is a Memo of Oral Advice. **The partners will go out and sit down w/ the clients that have been involved in our clients and have a discussion w/ the client about the notice and the impact the notice may have on their transaction**. The partners will bring up things that the client will want to actively consider.
         (1) Client then free to seek the advice of other advisors
         (2) Think about whether should amend for additional disclosures, not file using this transaction, etc.
         (3) Throw the issues out and let the client decide.
         **(4) There will be 2 partners at each meeting. The meeting will be documented and forwarded to Jeff for keeping and tallying.**
            (a) Doesn't need to be 2 IS partners, just 2 partners (e.g., could be a fedtax partner w/ the relationship). Jeff has a strong preference for 2 partners rather than a partner and senior manager – it is a positional thing. Can discuss particular situations w/ Jeff.
               (i) Senior managers can go along w/ the 2 partners.
            (b) Rationale: if there is a problem, then want to be there eye to eye and have a witness
         (5) The responses from the clients will be all across the board.
         (6) Scripts not done yet. Jeff hopes to have the scripts by the end of the day. It's in the review process right now.
            (a) Scripts will include what kind of additional disclosures if there will be additional disclosures.
         (7) Clients that need to be visited = anyone that we undertook a trade with, i.e., FLIP, OPIS or BLIPS (no matter when it occurred) and SOS
         (8) Not adversarial – even though our engagement letter says we don't have an obligation to keep them updated, then
         (9) No time set to get this done since there are a lot of them – Jeff thinks maybe by end of next month
         **(10) If the tax returns have not been signed and out the door, then this meeting is a requirement before we can sign the return.**
         (11) There will be a modified procedure if the return is under audit that year.
            (a) Luckily, we don't have a lot under audit. The ones that are under audit have TCS involved
            (b) If have an audit, be sure that TCS is involved. This way, they have a better measure of what's happening around the country and whether there needs to be a national initiative.
            (c) If a client comes under examination and would like KPMG to represent them, there is a new approval process to go through. The approval process is having Shelly Kaye, Mark Ely, Rick Rosenthal, and Steve Gremminger give approval.
   b) If you gave them the rep letter, the opinion letter is essentially complete and sitting on Justin's desk. The opinion is dated after the notice and is addressed in the opinion letter.
      i) New paragraph is going through final reviews. They were directed to complete their review process yesterday. It wasn't but Jeff is looking out for it.
      ii) Once final review done, then Justin will add the one paragraph and get them out.
   c) Intelligence about how other firms are dealing w/ the Notice and whether lists have been required to be produced?
      i) As far as we know, nobody has received a request for a client list or anything like that.
      ii) KPMG hasn't received a request like that
   d) Q. on the grantor trust issues, what if we didn't sign the return?
      i) If you have a suspicion, then we need to address it.
      ii) When it comes to grantor trusts and grantor trust netting, we are addressing that separately. Clients are in the process of being contacted w/ a separate script.

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iii) In a nutshell, we are telling them it was a mistake and they need to amend the return since the notice specifically addressed it.

e) Q. will there be communication beyond this group, e.g., to the Fedtax partners?
   i) The firm is looking at the IS group to identify affected transactions

**f) In process BLIPS (not out of the fund when the notice came out)– we ARE going to write their opinions (Sean's OK)**

**g) If grandfathered short option commitments client saying they want to do the transaction but never implemented (never wired funds) –**
   i) Jeff thought they decided we are not going there - have them do something else.
   **ii) However, this got called into question this morning**
   **iii) Right now, he thinks it is 50/50. He will know more tonight**
   iv) **If client was going to do it anyways (despite the notice and everything else people have said), just will KPMG get the fee (rather than go to someone else), then he isn't sure. He will know more tonight. He thinks in THAT situation, they just may let them go through it anyways.**
   v) But they are NOT marketing the strategy in any way.
   vi) Grandfathered if have signed engagement letter and was just ready to wire funds
   vii) No minimum on these right now
   viii) If we are going to do these, then we will still get value added fees and will still be issuing an opinion.
   ix) Q. Brown & Wood going to write an opinion? Brown & Wood is going to fill their commitment HOWEVER, they prefer fewer than more of these situations. It will be easier for them to say yes if larger transaction. Easier for them to say yes if sophisticated client. Easier for them to say yes if client already trades in currency and options.
   x) Marketed b/4 the notice went out: they had their presentation and they said "yes, make it happen" bnt it didn't happen. Easiest to document this if had signed engagement letter in place.

2) Where we are going
   a) LPSD – going well, they have made some revisions to the disclosure agreement and will re-circulate to the IS area leaders
      i) They have been asked to create an alliance agreement w/ MilBank in addition to alliance w/ Spectrum.
      ii) They are talking to Delap about KPMG issuing an opinion also
   b) BIGS—M&A looking at it. There is meeting this Friday on whether we can keep going
   c) ODV – the software is now complete and posted in the toolkit
   d) SELLS – the whitepaper and presentation materials should be ready by WNT review by early next week at the latest. Software very close
   e) REACT – David and Rick Rosenthal have been talking to MilBank so Tracy is waiting to hear back
   f) New law firm strategies they are looking at:
      i) Large diversification strategy is at DPP – more likely than not opinion.
      ii) **LT deferral strategy w/ up-front loss deduction** – no KPMG opinion but will have law firm opinion. This isn't as far along as the first one.
         (1) There is a decent probability that it will be implemented.
         (2) They are looking for beta tests
         (3) Current loss but at an indefinate time, then conversion. If hold until death, then permanent elimination.
         (4) Start at $50 and work your way up. They think there is a number of these across the country.
         (5) First come first serve
         (6) Will probably be a Brown & Wood opinion
         (7) This IS the Jones Day transaction – we just changed law firms to Brown & Wood
         (8) There will be another party involved. Probably Brickolodge (?) – they are similar to a Presidio or Quadra
      iii) They had a lab meeting last Friday. There are a lot of things in the hopper.
      iv) Don't bother unless $50 mil or more – they prefer the "or more"

(1) Reasons: cost effectiveness. Plus, they have decided they will do fewer transactions – higher dollar and fewer

v) Diversified and Presidio and Helios all have something up their sleeve. They are looking at the Diversified one and think there is a realistic possibility of success.

(1) Quadra has a supposed solution that they claim is o/s the 2000-44. One of the NE client's has been clients has been contacted about it. It will be a Brown & Wood opinion. It would have been a $1 mil. fee that KPMG was lined up.

(2) Also in the NE, the Sbarro (food chain) brothers were approached by an ex-KPMG partner. We told the client we need to see the transaction in order to be able to sign the return. However, the source is reluctant to let KPMG see it.

vi) We DO have an alternative loss conversion transaction – if large, talk to Tracy.

g) SLEEK – There have been emails going around but no on implemented yet.

h) On all of these strategies, it is critical that the client be given a choice of institutions from which to choose from. The client needs to decide who they use and it is not KPMG choosing.

i) SC2 – different tax exempt entities, where are we?

i) There is SC2 calls on Friday mornings.

ii) They are looking at alternatives to broaden the charities available – include charities w/ NOL on UBIT. In this case, the charity can act much like a donor advised fund.

(a) Q. The Zoo have large NOLs still?

iii) They are in the process of identifying charities w/ NOLs.

iv) Lessens the benefit to the client but easier because they can more easily choose the charity to be something they like to support.

**Notes: 09-27-00 Western area IS call**

1) It sounds like the door is open on the grandfathered SOS deals.
   a) Jeff is meeting w/ Rick tonight so they will have resolution tonight.
   b) Greed outweighs fear
   c) Dale doesn't recommend doing anything until it is a for sure thing.
2) We have the approval. We WILL sign tax returns and we WILL complete the opinions. However, 2 partners must meet with each and every client that will get the return and/or an opinion letter. Take the client through what the issues are, what has changed, what the risks are.
   a) Talk to people we for which we haven't done returns PLUS people that we have done FLIP, BLIPS, OPIS and SOS deals.
   b) If haven't filed the return yet, need to have the meeting b/4 file. If have already filed, then need to have the meeting by 10/31
3) We may be able to do SOS to the extent we have already talked to our clients before this happened and still willing to go forward.
   a) Don't tee up anything yet.
   b) Must have been marketed before 8/11.
   c) Presidio will NOT do any more biuary option deals period. So we would need to do deals through Diversified – the Notice REALLY scared them, their pockets aren't all THAT deep.
4) IS lab meeting last Friday
   a) LPSD – ready to go. Hit a snag last Friday w/ alliance agreement that they need w/ Blachmacher's firm. Delap is still concerned w/ our relationship w/ Spector so there is a possibility that we will be doing an opinion letter (probably to justify the fee). There is also talk as to whether we can do it for corporations. Still can't offer this to audit clients.
   b) Midco – still moving forward. There are a lot of people doing variations of this. They are submitting the whitepaper and M&A are looking at it. It looks like it will be approved.
   c) ODV – software done
   d) SELLS – whitepaper s/b submitted soon
   e) REACT – w/ Blachmacher on whether he will issue opinion letter
   f) **Capital or ordinary loss generator (Common Trust fund planning strategy)** – a long term deferral that generates a loss in the current year. May be available this year to offset prior recognized gain. Pick up capital gain some time in the future.
      i) The good thing is that you can enter into it on 12/28 and still get a loss in this year.
      ii) Less risk than the binary.
      iii) Minimum still $50 mil.
      iv) Indefinate deferral until you try to pull it out
      v) Cost: 6-7%, no on-going costs
      vi) Making investment in common trust fund. The fund can allocate loss to you in the current year.
      vii) There is an investment advisor involved so can work to get investment strategy going inside the fund
      viii) We are at a more likely than not position.
   g) **L.T. deferral strategy – works only for publicly traded stock.**
      i) Can have some access to the fund (which may not have w/ the common trust fund)
      ii) It's mainly a diversified portfolio inside a structure you can control.
      iii) Possible elimination if you die w/ it.
      iv) More of a long term monetization
   h) Strategy to use expiring charitable contribution deductions
   i) Private exchange fund strategy – whitepaper should be done by end of next month. Waiting on Mark Price to finish up on the prepaid forward contract.
   j) SOCKS –
      i) Gets to same place as variable prepaid forward but better economics
      ii) They saw this once a couple of years ago and had dismissed it but are now re-visiting it.

IS Telecon 10/2/00

No final script yet for discussions with client for BLIPS.

Have some more techniques in door to evaluate, but still need to get approval for them. No specifics.

REACT - Blottmacher has agreed to write more likely than not opinion letter. Can't market yet, until have alliance agreement with Milbank Tweed in effect, hoping to do this quickly; and also work out marketing parameters with Brockway. In addition, Delap wants us to have copy of Blottmacher's opinion letter first.

LPSD – Delap wants to get alliance agreement in place

Meeting October 16th with leadership – Jeff wants us to make sure OMS is updated especially for IDV and two gen IDV

Sells – Tracy still waiting on whitepaper to review

Sleek – Sent memo that can age stock position (that sleek is not a straddle) for review by Rosenthal.

**Notes: 10-23-00 IS call**

1) TMS, there is an Innovative Strategies class on the 15th.
   a) Tracy and Jeff will be teaching this.
   b) Q. who has signed up for this? As of last Monday, only 2 IS partners had signed up for the class. What seems to be the problem? Should they not have this class? Does Jeff and Tracy have to spend the time to prep for this?
   c) Advanced STRATIS is on the same day so there is a conflict.
   d) Roll-call
      i) Gregg Belcher
      ii) Ed Hop
      iii) Bob Hobble
      iv) Bob Peterson – not at TMS
      v) Deann Remo – Haven't signed up because struggling w/ whether to take mergers & acquisitions instead because she has a lot of M&A work lately.
         (1) Tom Maquire is on the verge of canceling this because doesn't have 10 people
      vi) Mike Watkin
      vii) Jennifer Arps – not signed up for the course (instructor)
      viii) Bob Gordon – not signed up for it now, in STRATIS right now. He can go to IS then send his managers to STRATIS.
      ix) Ralph Pike – signed up for the course
      x) Marcia – teaching chapter 14, conflicts w/ this
      xi) Dave Zaudke – STRATIS
      xii) Rich Bloom – won't be at TMS that week
      xiii) Justin – chapter 14
      xiv) David Cohn – invitation only for a while but if open, he is interested in going to it
      xv) Breut Lipshultz – on vacation this week
      xvi) Ed Bereva
      xvii) Dave Cohen
      xviii) Tim Speiss – in a meeting w/ Merrill Lynch right now
      xix) Gill Tender (?)
      xx) Bob Thrifty
      xxi) Mike Gray – tried to get into it this morning, HRSC says IS class is closed.
      xxii) Pamela – couldn't get into the class
      xxiii) Catherine Haste – teaching that day
      xxiv) Kaki Rawls – signed up for IS
      xxv) Bob Perez
      xxvi) Dan Slatery
      xxvii) Glenn Slolop
      xxviii) Carol Whorleye– she's teaching
      xxix) Pap Wean
      xxx) Dale Baumann – will be there, teaching
      xxxi) Randy Bickham –
      xxxii) Deke – teaching part of it
      xxxiii) Carl Hastings – teaching sales training that day
      xxxiv) Shannon Liston – not signed up but coming
      xxxv) George McCrimisk
      xxxvi) Jack Nuckolls - teaching
      xxxvii) Robin Paule
      xxxviii) David Rivkin – was on STRATIS but will switch and bounce in and out of class
   e) There is a small chance that they can switch it to Thursday. The problem w/ Thursday is that Tracy is already teaching Iustrat and the PFP Technical Update and Traditional Innovative Strategies (e.g., TCLAT, ATT, IDV)
2) BLIPS opinions

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a) They are still struggling w/ final WNT sign off
b) Richard in meetings all day but Justin will make sure to talk to him before the end of the day
c) They should be happening soon.
d) Charges: $10,000 range. Jim Brennan is working up the numbers that will cover both WNT and Atlanta numbers

3) New solutions
a) Firm is remaining open minded about continuing to offer clients "artificial loss" transactions but there are constraints. It is not the easiest thing to do to get these out the door because of all the reviews, even if we don't sign the opinion letter – we still sign the tax returns.
b) Issue: what is required for tax shelter registration plus 6111(c).
i) They are trying to get a law firm opinion that no registration is required so that is slowing us down a bit.
ii) 6111(c) is about using non-disclosure agreements. The problem is that someone may end up offering the strategy to a corporation. Even if no non-disclosure agreements required, someone offering it to a corp. would result in required disclosure of EVERYONE, not just the individuals.
c) They are in the process of looking at all the solutions in the market
d) If under $50 mil., KPMG wont' be offering them solutions. There may be some exceptions, e.g., they have done 3 strategies w/ us before, they are exec. of a national account, etc.
i) For > $50 mil., we will have at least one or two more we can offer
e) REACT
i) They are working through the tax shelter registration issues
ii) They are still working with Milbanks
iii) They are close, can't market it yet
f) LPSD
i) Larry has just approved it so we are able to officially market this but can't offer to audit SEC clients
ii) They are finalizing toolkit items
iii) Dave Zaudke is still working on certain issues as to whether need tax shelter registration.
g) BIGS
i) DPP reviewing the whitepaper
h) SELLS
i) WNT reviewing the whitepaper
ii) Hope to have it to DPP by next week
i) Up front loss w conversion and deferral and maybe elimination
i) Tax shelter registration rules
ii) They are looking for beta candidates. They are putting new betas on hold before they figure out the bottom line on registration
j) Diversification/deferral strategy
i) Alliance paperwork submitted to DPP
ii) They have a should opinion by Brown & Wood.
k) Jeff would like some feedback. They have been noodling with BLIPS and OPIS client from prior year and tax controversy. TCS will send something on what our files should have.
i) He's thinking that maybe clients should continue to invest in foreign currencies – i.e., new investments to bolster old investment habits

4)
a)
i)
ii)
b)
c)
i)
d)

5)
a)

6)

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a)
7)
8)

**Notes: 11-27-00 IS call**

1) 2000 BLIPS transactions
   a) Need to finalize rep letters
   b) Need to get Angie the project number so they can finalize the opinion letters before something happens on that front.
2) TMS
   a) Financial products course at TMS was good.
   b) Then had a good session on the PFP lab items that will be coming out soon.
   c) There are still various alliance issues to work out.
   d) Friday in Miami was their last lab meeting. Structural and organizational issues. A couple of strategies stand out.
      i) Split dollar strategy
      ii) Midco (built in capital gain) strategy
3) Monetization and hedging of concentrated position appears to be an area of focus for our practice.
   a) SLEEK, IDV, private exchange funds, etc.
   b) Tim Speiss will lead a task force to develop a plan for this shift in focus.
4) Rich Blumenreich will do a write up of target profile
   a) E.g., FLP w/ appreciated assets in existence for 7 years
5) Strategic directional shifts for the practice
   a) Q. what is the benefit of the suite approach? The idea is to go back to the way we typically do business. Sell a process w/ a number of different options. Also, internal KPMG constraint on solutions. The criteria for a solution now is that it needs to generate $5 mil. of revenue. So, e.g., for SLEEK, then need a lot of engagements to get to $5 mil. Part of the idea is to get the good solutions together and wrap them together because otherwise, can't get $5 mil. of revenue.
      i) Need to beef up our training on financial products so we can better understand the economics and deliver better value.
      ii) We need to understand the economics, describe it to our clients, and walk our clients through it to help them make their decision.
      iii) Gives us the ability to grow, i.e., move more into the role of wealth advisor rather than merely tax advisor.
6) Loss generators (deferral or permanent avoidance)
   a) Continue to be committed to that aspect of the practice so in the market come the first of the year
   b) E.g., Common trust fund
   c) Our biggest issue is still tax shelter registration and whether that is required.
   d) The cousensus has been that selling a registered solution is better than not selling a solution at all.
7) Customized solutions for clients:
   a) Everyone is aware of DPP sign-offs required for every solution
   b) Randy Bickham will continue to beta test strategies out here in the West coast
   c) Right now, a lot of these solutions are at the intuitive level and they want to take it to the product level.
   d) They want to get paid where they can but also want to get relationships where they can.
8) Q. have we considered tying in Bear Stearns?
   a) That is a task for Tim's task force – look at our alliances and see where it makes sense

**Notes: 11-27-00 Western area IS call**

1) Update -- They had an all-day lab meeting on Friday. They talked abont 3 things mainly:
   a) Tax shelter registration. The firm is still looking as to whether we need to register some of these. IDV, CRT's don't need to be registered but some of the more aggressive ones may need to be registered.
      i) Q. retroactively or prospectively? Prospectively they think.
      ii) People w/ back end type strategies. Presidio and Brickolodge. They are trying to finalize their repo structure – a derivative of BLIPS using sec. 1001 as the trigger point.
         (1) They are doing a handful of deals – not taking it through IS
         (2) They wanted it to be $100 mil.
         (3) Right now, they want to fill 5-6 spots so flexible on the $100 mil.
         (4) We can still do it this year; it's not too late.
         (5) Randy snggests that if have potential deal, call John.
         (6) Bear minimum is probably $50 bnt it is always a function on where they are on the calendar.
         (7) Brown & Wood doing the opinion.
         (8) Carl has seen a good drill down.
         (9) They only want to do 10 or so of these so they do NOT want it to be part of the regular IS solntions.
   b) Nondisclosnre agreements. We are not to be using them unless for LPSD
      i) They are going to re-work the pre-engagement letter to be more of a spirit of the engagement letter. Make it clear they can talk to whoever about the strategy.
      ii) Do not use ANY non-disclosure agreements for anything.
      iii) Don't worry abont the ones we already have out there.
      iv) Robin got a call from a client that did BLIPS. The client's banker went to a seminar that said that KPMG was subpoenaed and is giving a list to the IRS.
   c) Strategies
      i) Coming np w/ national prodnct champions
         (1) LPSD – Dave Zaudke
         (2) ____ – Dale and Rivkin
         (3) BIG – Deke
         (4) Monetization Suite – Tim Speiss
      ii) We will probably move more towards being a wealth manager/advisor for them. The qnestion is how to accomplish that and get people the expertise.
      iii) Dale and Randy have been talking about it for 6 months now but it seems like just now are people willing to devote time and effort to this focus.
         (1) It takes a lot of investment
         (2) Put presentations together to help analyze one deal compared to another.
         (3) A way to distinguish ourselves from others – i.e., gives the real investment alternatives and suggest directions for the client. We take the best others have to offer and put our tax twist to it.
      iv) In the monetization suite:
         (1) Sleek, sells, IDV exit, private exchange fund, Charitable LP, private prepaid forward
         (2) Some of these haven't been finalized yet so can't be released w/ slides, etc.
2) LPSD
   a) Rivkin has a client that even though younger, they can use the life of a parent as the insurable interest
      i) Use the parent's life then use that life to transfer wealth to grandchildren.
      ii) This can help expand the people we are looking at.
   b) If know grandkids are in future, then use a dynasty trust.
   c) Fee comes nnder Zaudke's name but will keep track of the credit internally – it won't hit the normal score card that they see. Just trust Doug that they will get the internal credit.
3) New wins or new opportunities?
4) Q. can we sell a registered product?

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a) If that is all that is out there, then yes, we can sell registered products because it's better than nothing. But until then, it will still be very hard to sell a registered product.

5) Greenberg deal
   a) Carl finally got the powerpoint on it and Randy will look into it.
   b) It is a loss generator. (Carl doesn't want to distribute it too widely else have his wrist slapped)
   c) Greenberg is not going to register this one – can't even have consistency internally.

**Notes: 01-29-01 Western area IS**

1) CELS/CEDS
   a) There will be more training for everyone later on
   b) Maybe schedule something in February – Jeff threw out Las Vegas as a possibility.
2) During the lab meeting, they did talk about each of the strategies.
3) REACT: The big issue w/ REACT is that Blachmacher's opinion letter is only 15 pages so he has to go back and bolster the arguments. But REACT HAS been approved so go forward w/ pushing it.
4) Private exchange fund – had meeting w/ Bear Sterns and can get over the commercial issues.
5) YURANS – conversion strategy is in the works. Long down the works but is
6) Bond in Hand strategy – if invest in muni bonds, then can increase after tax return in the muni bonds to the 8-9% return.
7) BIGS/MIDCO – continue to push forward
8) POP – registration is the issue
9) Common trust fund – registration is the issue
10) Stratecon joint venture suites – there may be opportunity to diversify FLP w/o trigger gain
11) Jeff negotiated w/ Stratecon. They didn't know we had an IDV strategy. They will now go out and look for S corp w/ IDV potential. If Stratecon sells it, then PFP gets 1/3 of the revenue.
12) CPR
   a) Expiring charitable c/o deductions.
   b) The largest struggle will be w/ the spousal situation or in CP states, spouses already own a 50% interest, it will be difficult to argue economic justification to sell from one spouse to another. It will be a challenge in CP states.
   c) This will not be OPIS reveuue
   d) Report on Form 4
   e) 16(b) issues – purchase/sale on same day would be matched up so no gain there but Tracy Stone sees that clients should not purchase/sell w/in 6 months on either side. Not an issue if can get a single strategy
13) LPSD
   a) Still alive even though notice came out
   b) Maximum benefit, put in place before end of the month. Can do it beyond Feb 28, but longer to get it to the grandchildren.
   c) February 16 is the cut off date for Spectrum – must be signed up by that date.
14) ODV
   a) No further information. Still a stroug go.
   b) Dale's client – after exercise and sell, they want to invest in non-marketable assets (e.g., land). Deke was concerued that putting that much in non-marketable will affect the note terms and guarantee. But it turns out that as long as < 50%, no problem.
15) OMS updates were sent to everyone. Please update them. They are starting to micromanage so get old stuff off and put new stuff on. If have any questions, call Dale
16) If haven't finished BLIPS/OPIS meetings, push to get them done and the Memos of Oral Advice to Jeff
17) CEDS
   a) Allow diversification on tax deferred basis. 5-6% cost (1% transaction costs, 1% KPMG, 1% Jones Day, 2% Brickolog)
   b) Have Class A and Bs.
   c) Investor loans to S corp. S corp takes those securities and sells iu the marketplace. There will be requirement that the S corp return those later on. So now, in a short-against the box situation. However, since grantor trust owns it and the grantor trust is not related to the client, then not officially short against the box – 1250 related party only measured on day one, not when get out. So, we have short against the box economics w/o the tax rules.
   d) Problem: note security limited to 5 years. So, pay 5-6% in order to save 29% tax. This may not be enough for economics. So, there is pushback for more than 5 years and make it a demand loan rather than term loan.
   e) S corp takes the cash and buys a diversified portfolio.

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f) 6 months after, there are a series of puts and calls between client (class A) and Bricologe (Class B). Think that 6 months out, get Bricologe out.
g) The only issue becomes how to shut it down. If die, then step-up and eliminate the strategy. Otherwise, trigger gain whenever get the cash out
h) Can lend money out to the investor
i) Should opinion from Jones Day. KPMG will NOT be issuing an opinion
j) Minimum: $50 mil. May want to drop minimum until market picks up.
k) Do not know who else is marketing this. We've known about it for 1 year.
l) There is a potential exit strategy to allow elimination of the gain, but WNT isn't comfortable with it yet.

ICV_CEDS.ppt

18) CELS
a) Conversion plus monetization
b) Monetize on loan w/o margin requirements and it is NOT a straddle. Can put STCG – stock continues to age so can turn it into LTCG
c) Throws off losses in the form of investment interest
d) Bricologe gets 1% plus have a carry that gives them a preferred return.
e) Sells 1 takes stock, drop it into Cels 2. Cels 2 goes to Deutsche and gets a loan for 8-9%, w/o origination of 1% or so.
f) Client is in something similar to a prepaid forward contract. Why not just do a prepaid forward and/or collar w/ loan?
   i) No margin requirements and it is not a straddle. So, can still age the holding period.
g) Favorable SEC reporting requirements for this strategy that is better than either a prepaid forward/collar
h) Cost 5-6 b.p. – KPMG gets 1% of this
i) Hedge stock position, diversify today, not toll holding period or reset it.
j) They didn't spend much time on this – just on an overview basis
k) Jones Day will also be doing the opinion letter on this. KPMG will NOT be issuing an opinion letter

CELs structure.ppt

**Notes: 03-05-01 Western area IS call**

1) Robin has 3 BLIPS that are being audited by CA, not federal.
   a) The FTB auditor is Kelly Lee
   b) One was not even prepared by KPMG, done by some local CPA firm so know they are not pulling by SSN or anything.
2) STRATECON presentation by Larry Manth
   a) STRATECON has some strategies that may be applicable to the individuals we meet with.
   b) **Modified version of SC2** whereby proceeds from the stock given the charity of his choice
      i) S/h now gifts S corp. stock to community trust. Community trust owns 90% of the S corp. and will be allocated 90% of the income. However, Community trust subject to UBIT. But, 50% of community trust UBIT is exempt. Tax paid by the community trust will be funded by the s/h (c/b the corp. but better if by the shareholder). Now, have cut federal taxes in ½, plus get deduction for the ½ because is charitable gift.
      ii) S/h will have ability to redeem, e.g., for 3 years.
      iii) So for 3 years, the community trust will have 90% of the income, pay tax. At the end of the 3 years, community trust will want to get redeemed else the s/h will stop funding the tax. So then, the cash will go to whatever the s/h designates
      iv) Benefit is about 50% of the SC2 benefit.
      v) WNT is comfortable w/ this. And approved to market. Same opinion letters, 2 more likely than nots, 1 should opinions
      vi) They are just working to get the community trust to pay us and need to run this by DeLap.
      vii) This is also an insurable transaction. We've worked w/ AIG and Hartford for the potential tax liability that may arise if the IRS makes the 90% income come back to the s/h. To insure $10 mil. of tax, then cost is approx. $500,000 - $700,000.
         (1) Q. how can the insurance company get out of paying the tax? REALLY hard since this is SO fact specific – it even covers retroactive change in the law. Can probably even bargain for proactive change up to 7 – 8 months out.
      viii) Fees – 7.5% of first year income v. SC2 where fee is 10% of income
      ix) They have talked to community foundations (Chicago and NY community trusts) and have been open to this.
         (1) Eventually, the money will go wherever you want it to go. However, if your community does not have a community foundation, then the community foundation may want a toll charge for letting the money go outside their area.
   c) **Pship liquidation strategy**
      i) If have FLP that owns assets, assume non-751 (non-recapture/non-inventory) assets. The FLP will borrow the amount of money in which an individual's interest is worth that is cashing out of the pship. E.g., if worth $100 but $0 basis, the FLP will borrow the $100 and drop it into Newco Inc. Newco Inc. will take the cash and lends it to a related/friendly party to the individual – get a non 731 (non-marketable security) asset into the corporation – just be sure it is at arm's length
         (1) Now, have a note receivable of $100 in Newco. The corporation's interest is now used to redeem the partner's interest in the pship.
         (2) Individual takes it, now elects S corp. status, a flow through, pay off the note (doesn't matter since has full basis), now the cash can be invested in whatever the individual wants to be invested in.
      ii) Won't work where real estate is inventory. Will work if just investing in real estate – watch 751
      iii) Also, the property needs to have been in the pship for at least 5 years for this to work.
      iv) Should be able to work w/ marketable securities – as long as is a capital asset.
      v) This allows them to cash out of the pship on a tax free basis.
      vi) $500,000 minimum fee – approx. 3-4% of the gain mitigated.
      vii) More likely than not opinion.
      viii) Same basic structure for individual (small modifications)

ix) For corporations, the deadline is 6/30 due to a provision that is kicking in which says the basis of the assets inside a corporation will not be stepped up. – no sunset for individual partners.

d) **Mixing bowl**
   i) They spoke to pension plan friends and now do have a number of assets w/ the high basis, low vale. $50-75 mil. of built in capital loss – no ordinary loss assets right now
   ii) This will be more difficult for individuals than w/ corporations but it can still be done – much more flexible
   iii) Fees: KPMG fee 2-4% plus the pension plan wants 2% of FMV plus some kind of option kicker on redemption price to be able to share on the upside.

e) **Pre-IPO structure**
   i) Fund a pship. Similar to CPLS
   ii) When value of the stock gets sizeable (we know what the value is prior to IPO). Borrow on that, loan to a related party. Use it to redeem individual interest through this note.
   iii) Basically, use the debt to effectively step up the interest in the LLC since made a 754 election. Basis now approx. FMV so no g/l when sold
   iv) Need basis to approx. FMV today else have 704(c) problems
   v) Can form new pship – doesn't have to already be in existence.
   vi) Loan is usually recourse

f) If have lead, contact Larry Manth and he will direct us to the correct people.

g) Larry will send Dale slides on these to help people identify opportunities.

**Notes: 03-26-01 IS Call**

1) (5 min. late)
2) Monetization suite
   a) There are short modeling sheets – these are NOT for delivery to the client. Just to get an idea of different benefits from the different solutions.
3) CPR – Tracy Stone
   a) Nothing new to report.
4) ODV – Deke Carbo
   a) Nothing new other than try to get deals to close.
   b) Nothing has closed in the last 2 weeks. There is one on the West coast that has problems w/ engagement letter – once over that, then they should be good.
5) Loss generators – Jeff Eischeid
   a) They were supposed to receive an opinion about tax shelter registration for POPS but haven't seen anything yet
   b) In today's tax notes today, there is an article from Lee Shepard regarding the common trust fund structure.
6) LPSD
   a) They are ready to offer LPSD again now w/ a 80% benefit from pre 3/1. They are now going back to the pre 3/1 prospects to get more deals closed.
   b) Try to close before 6/30 as most states allow "back dating" (of up to 6 months) the policy so can use a better age for actuarial puposes
7) PFP Lab
   a) Private short sale
      i) Finishing touches are being done on the whitepaper. Hope that it will be submitted for approval this week
   b) EURAM (sp?) conversion
      i) meeting tomorrow morning w/ the promoters. Hope that the Stratecon folks have made headway on the technical issues.
   c) Muni bond strategy
      i) No registration required. Just working on alliance and fee arrangements.
      ii) Neil is trying to get alliances for hedge funds and private equity. They are trying to wrap it into an investment thing rather than advisory fee.
8) Arthur Anderson is rumored to looking to add hedge funds and private equity to their investment advisory services.
9) They are in the process of filing 2000 tax returns which include BLIPS and OPIS losses.
   a) In preparing the returns, go back to the memos of oral advice and know that they wanted to do w/ respect to disclosure.
   b) If haven't had the conversation yet, then have it soon and document it.
   c) Make sure it is the client that makes the decision and not KPMG.
10) New Business
   a) None

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**Notes: 04-30-01 Western area IS call**

1) On the call: Dale, Deke, Robin, Jack, Erica, Jean
2) There was a chief counsel memo following up on the IRS notice re Midcos – gives standards to apply on whether to see if need to reclass on sale of stock followed by deemed liquidation – i.e., stick it to the buyer or the seller. This is the original version done by Ralph.
3) Update on 2 conf calls last week. Dennis got together w/ Larry Manth and formed an informal alliance w/ Stratecon re gain mitigation strategies. We need to look for opportunities to bring them out to corporate strategies and they bring us in on the individual side. For fees, everyone gets to time their time and expense. Any premium left over is 50/50 between Stratecon and PFP. This is only w/ respect to transactions were we bring the other into the deal – i.e., they make the introduction.
   a) The first call was just an organization call.
      i) They are going to set up a joint IS/Stratecon folder so we can have access to all the whitepapers.
   b) The 2nd call was on Friday, the Stratecon weekly call. Randy and Carl were going to talk about gain mitigation items available from Presidio.
      i) Targets: anything that did SC2. They havea number of SC2 clients that are ready to roll out. Shareholders want to take cash out now so this will help mitigate. Stratecon will go back to these folks and sell individual gain mitigation.
   c) The individuals: George, Dale, Randy, Carl. From Stratecon: Mark Hutchinson, Bob Huber, Andrew Atkin, and Adam Boyer.
   d) If have something, bring one of the 4 in so we can track and make sure that we get our 50% cut.
   e) Q. why the informal alliance rather than cross-selling revenue? A. to get actual revenue into each other's contracts.
4) Monetization Suite update from Robin
   a) Any successes in the market place?
   b) David Kohn is starting to catch up on the examples people were asking him to run. They have updated the software again.
      i) We are supposed to have them run the models rather than us doing it ourselves. Besides, we need to get pricing on prepaids, etc.
   c) She wants to know what kind of reaction we are getting in the market place.
   d) The key w/ CEDS is that it assumes you get rid of it in 7 years although it is obviously better if longer and if die w/ it.
   e) Dale has gotten good feedback from his clients.
   f) The key is that w/ the models, play around w/ it because it is very sensitive to interest rates.
   g) Anybody else had meetings w/ clients? Carl has been all over. Robin has some appointments w/ clients coming up.
   h) Training: messages are going back and forth. They are looking for National Distance learning date. Currently, it is slated to be around 3rd week of May but it keeps changing. Tim is trying to put something similar to what they did in WA – e.g., get Lehman to talk about prepaid forwards. Then have Mark Price talk about variable share prepaid forwards. Then have Brickolodge do a CEDs presentation. Currently, Tim is not thinking of having anything on SEC. It will be approx. 2-3 hours.

i) Robin thinks we need a 6 hour training on SEC and the inside workings of these prepaid contracts.
ii) If want additional training, then can get us to go to the distance learning. They are looking at the day after the national IDV call on 5/10.

i) Robin has not heard from George or Shannon on how they are doing on their marketing.
j) The other comments we are getting is on pricing – kind of pricey for a deferral strategy. People are still looking for a mitigation strategy rather than deferral. But it is pricey.
k) Tracy Henderson is working on a private short sale. She is working w/ WNT on some issues. In that transaction, get similar benefits to CEDs but take 3rd parties out of the loop so should adjust the price accordingly. There will be some differences. CEDs can be done w/ individual client v. private short sale needs a spouse. There are some other differences like that
l) Update from George:
   i) He presented CEDs to a money manager group that had sold a piece of their business for $200 mil. They asked us to go back and do modeling for them. As they talked through conceptually and compare this to some of the others, they will think ours is too expensive. But they do have one that is a potential live one.
   ii) George hasn't closed the loop on Bob Day.
   iii) There is another Bel Air group that got $212 mil. in cash. Carl approached them w/o George's knowledge. Carl thinks they are too risk adverse. George thinks there is some hope there.
   iv) Trust Company – they are being acquired by a French bank Society General – acquire for $700 mil. It won't close until 2nd half of the year and it is a stock deal and not option deal. They are a C corp. so Dale suggested getting Stratecon in on the deal

5) ODV
   a) They have revised the white paper based on some comments from people. It is in Gary Cvach's possession. They are also talking about a memo on SEC ramifications of the ODV transaction. DPP is concerned about us disseminating anything were we talk about SEC issues. So, they can distribute it to us on a limited basis but the memo is NOT to get outside the firm and will NOT be posted on the toolkit.
   b) Deke is not getting enough new ICVs from the Western area IS folks. All his meetings are same as 3-4 weeks ago
   c) RDV
      i) Restricted stock diversification vehicle.
      ii) Compensation that we are looking at is comp when restricted stock vests.
      iii) Good for execs w/ highly appreciated compensatory restricted stock
      iv) White paper w/ Gary Cvach. Once Gary done w/ it, it goes to Larry DeLap for his approval.
      v) Assuming no DPP snafu, Deke thinks will be ready to market in a couple of weeks.
      vi) Pricing same as ODV.
      vii) Targeted deal size approx. same.
      viii) They need to work out the economics. ODV -- 5% discount from intrinsic value. RDV – discount will probably be a little higher. Deke has to work this out w/ appraisers and the attys.
      ix) Same structure, sell to family member w/ independent 3rd party trustee. But, difference is have a condition subsequent should the restricted sale not vest. So, want

it all in the same year so can rescind because the purchaser will at risk (unlike ODV were already dealing w/ vested property).

x) Target: restricted stock that will vest shortly.

xi) Deke has suggested 10 days (used in BLIPS for days loan had to be outstanding) but hasn't heard back from anybody.

xii) What some companies have been doing is giving execs restricted stock grants rather than new options.

xiii) They will do a wealth ID search

d) Probably could combine ODV with IDV but would have to revisit how the documents are drafted. But otherwise, can do them both in the same partnership.

e) Q. How get updated list of execs that meet ODV minimum requirements? The last list was done in February. Robin and Dale did not get that list. Deke will send it to Dale and Dale will send it out to everyone. The target list is broken down by accounting firm. To use it, target KPMG first, then D&T and PWC, then AA and E&Y clients last because those 2 are the most aggressive when it comes to marketing their stock option strategy.

f) Single participant ODV

i) Normally, have 2 in the partnership w/ the other member being the spouse. If pull spouse out and now just have the trust, then trust need adequate capital and collateral to make the sale work so need more on funding. Also, on economics, the exec. ends up w/ something similar to if just exercised and sold. The economic pick up is usually in the family pship. If do ODV and the only partner is the trust, then the bulk of the upside is to the kids.

ii) Good if more like an estate planning strategy.

iii) To be able to use the interest deduction currently, then the trust needs to have enough other investment income.

iv) The execs interest payments would have to be at least 2x greater than where have spouse as the other partner.

g) Across the country, we have only implemented 1. If stock had not tanked, then about 15-20 nationwide would have done it. Many are interested but don't like the stock price.

h) Some industries stock are hanging in there: Biotech, pharmaceuticals, etc. Health care industries are prime targets.

i) E.g., Amgen. Robin can get Deke in if he wants but, their options aren't transferable plus they have a pooling problem. Per George, the potential there is slim to none.

(1) Best is to go straight to the C class person because what the tax director, etc. deem as a barrier may not be so when it is the C class person requesting it be done.

(2) Most of these are not transferable so most have to amend it anyways. The authority to make the amendment is at the comp committee level and does not go to the board nor shareholders. Comp. committee will only amend for just the top 4-5 but not for everybody.

(3) Amgen's issue may be deferral of the tax deduction since they are now profitable.

(4) Their issue may be pooling. If amend plan because of the pooling, then you are screwed. But here, we are doing it solely to create deferred comp for the execs and not for the purpose of qualifying for pooling.

ii) Another industry that would be good to go after is the financial industry; e.g., banks

i) Get ICVs up in the Western area

6) LPSD

a) Dale got illustration of LPSD v ATT v GRAT and his asst will be sending it out.
b) Dennis is getting Don Carter to come in and do a presentation to the SF managers. Consider doing same in our area.

7) IDV Exit strategy
   a) Ready to go.
   b) Target list – it was run w/ low threshold so most will not qualify. But here are some good ones on the list, mainly in the LA area. $15 mil. threshold for the exit strategy. The list was disappointing.
      i) Dale as asked Tracy Stone and Eischeid whether can go out to friendly attys but Eischeid has not gotten back to them.
   c) The 2 big ones for $400 mil., Carl has talked to them, they aren't interested.
   d) Robin is meeting w/ another client on the list to talk about it. Robin is going to try to get together w/ George on his clients.
   e) We have a copy of the Blockmacher opinion that is on the outlook folder. KPMG has not written our opinion yet.
   f) There is a spreadsheet that Tracy was supposed to put on the folder to show economics of this – i.e., why would they want to come out of this deferral technique.
   g) Good cuz get basis step up and get cash out.
   h) Frank Montgomery's trust is good so that can do this easily so go back if you used his documents and the amount is large enough.

**Notes: 04-04-01 Conference call**

1) Tim had emailed an agenda to everyone about 1 hour ago.
   a) There were 5 points he wanted to focus on
2) Target list review and process discussed last week
   a) Take list and divide by business unit. Then go over the targets and start setting up ICVs using existing relationships.
   b) Comments about the target list and how the process has been going.
      i) In South, they have divided the areas. They are getting responses back from the partner group that is directing them not to contact certain people where deceased. They think the most significant contribution will start Monday.
         (1) Q. are they involving the BDMs?
      ii) Tim would suggest that we start going through the list and not waiting until
3) Toolkit items and approvals
   a) The TSAs and the TSI for CEDS and the TSA for the whole suite has been approved by DeLap. The name has changed to "Tax Monetization Advisory Services" – be sure not perceived as providing investment products (although in PFP, we will probably still call it the Suite)
   b) The CEDS ppt has been done and approved.
   c) Anything missing or not working in the toolkit? It would appear that it would be adequate.
   d) The software: some people have comments on the CEDS model so they have gone back to Brickolodge. They haven't made them yet but they seemed open to the comments. All the information is there, it just isn't has been as friendly as we are used to. David Kahn (sp?) will try to make it more user friendly.
   e) The CELS model has also come back and David Kahn (sp?) will start to take a detail look on it. It also is not currently very friendly but he will work on it.
4) Target lists. They did $25 mil. and $75 mil. lists. To cross reference w/ the ODV lists, Carol found out that there are many individuals that are on both the ODV and the monetization target stuites. Thus, they will be generating a new target list which covers candidates for both so can kill two birds w/ one stone
5) FAQ
   a) Q. Why is registration not required for CEDS or some other solutions? A. not offering these to corporations so OK even though ask for non-disclosure for CEDS.
   b) They also have a summary SEC memorandum from an associate of Jones Day on what happens on stock loans. He will circulate that later today. The summary will go through the filing requirements, etc. They may post that to the Outlook folder and/or toolkit
6) Letters to area managing partners has been prepared and is going out to remind the area partners that we have PFP monetization strategies. Good to get the AMPs behind this.
7) Also, there will be a letter that will go to the tax service partner and the assurance service partners. Use this letter to go out to a TSP or ASP when you are looking for their help on pre-ICVs and you want their help to push that through.
8) Cases people are working on, ICVs, and how they have been going
   a) SE: one activity that is a repeat customer (did OPIS and BLIPS) – Starwood stock. The quirk here is that it is a formerly married couple that is very cooperative post divorce and have partnered up on multiple strategies (incl. OPIS and BLIPS).

b) S: the one they are closest to on is a presentation they will do on Friday in Dallas. It is both an ODV and CEDS candidate. They also did an Enron presentation yesterday. After their visit there, the consensus is that it is better to just meet w/ the executives (e.g., as opposed to HR (rather than the tax directors), etc.). Where have corporate programs, it may be good to team up that way.
c) W: Conference on Monday and Robin had distributed the list to the appropriate areas. She had also asked for responses on where they might have an "in." One person responded and all those are on Dale's list. Carl has been out to been a couple of people on the list in the LA area and David Rivkin says he's got some targets.
d) MidWest: They sorted the list and Bob Jordan has been talking the partners individually. Where people wanted to block off someone but don't want us to call cold, then he contacted the PFP partners to try to get them cooperate to get us in. They have developed a script to cold call both internally and externally. Bob was asked to share that script and he will send it to Tim
e) MidAtlantic: Have a signed engagement letter for SEDS candidate plus he's interested in IDV. They have had a bunch of ICVs plan for next week and immediately after 4/15. There is one individual that is a CEDs candidate (prev. on ODV list but not on CEDs list). The list has been circulated to the MidAtlantic partners and he will be talking to each of the PFP partners individually.

9) Have they thought about additional resources to add to the suite team? The West coast has done a really good job on that.
10) Let Tim know if we need additional resources.

CALIFORNIA BOARD OF ACCOUNTANCY

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**CBA Item VII.A.**
November 15-16, 2012

# Consideration of an Adverse Comment Received on the 15-Day Notice of Modified Text Regarding Title 16, California Code of Regulations (CCR) Sections 12, 12.5, 37, 80, 80.1, 80.2, 81, 87, 87.1, 87.7, 87.8, 87.9, 88, 88.1, 88.2, and 89 – Continuing Education

**Presented by:** Matthew Stanley, Regulations Analyst
**Date:** October 18, 2012

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## Purpose of the Item

The purpose of this agenda item is to present an adverse comment received regarding proposed changes to the California Board of Accountancy's (CBA) Continuing Education (CE) regulatory proposal.

## Action(s) Needed

The CBA will be asked to determine what action, if any, it wishes to take regarding the comment.

## Background

At its September 2012 meeting, the CBA approved changes to its CE regulatory proposal following the public hearing on the proposal. One of the changes that was made was to redefine the fraud CE requirement from "detection and/or reporting of fraud in financial statements" to "prevention, detection and/or reporting of fraud affecting financial statements," thus expanding the scope of the fraud CE course.

This change was proposed by the California Society of Certified Public Accountants (CalCPA) along with other comments on the proposal. One of CalCPA's other suggestions was to leave the fraud CE course at its current eight hours rather than reducing it to four hours. This suggestion was rejected by the CBA at the September meeting.

The changes that were approved by the CBA were publically noticed for the required 15-day comment period which ended on October 18, 2012. CalCPA submitted another comment (**Attachment 1**) on the proposed changes which was of a substantial nature requiring that it be brought back before the CBA for consideration.

## Comments

CalCPA's comment addresses the proposal for reducing the fraud CE hours from eight to four hours. It believes that the proposed expanded definition for fraud addresses the CBA's original concern regarding the lack of new material to substantiate an eight hour course and increases the protection of the public. Therefore, it believes that

maintaining the eight hour fraud requirement is essential to retaining the integrity of the profession and protecting the public.

If the CBA decides to make any changes, staff will prepare and proceed with a second 15-Day Notice of Modified Text.

<u>If no changes are to be made regarding the public comment:</u>
No motion is needed; however, staff would request that the CBA clearly state its reason for rejecting the public comment so that this can be included in the required Final Statement of Reasons.

<u>If substantive changes are to be made regarding the public comment</u>:
*Motion*: Direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations as described in the modified text notice.

**<u>Fiscal/Economic Impact Considerations</u>**
Licensees will continue to pay for 80 hours of CE every two years regardless of whether the fraud CE requirement is four or eight hours.

**<u>Recommendation</u>**
Staff has no recommendation on this item.

**<u>Attachment</u>**
CalCPA Letter dated October 3, 2012

Attachment 1

1201 "K" Street, Ste. 1000
Sacramento, CA 95814
(916) 441-5351
www.calcpa.org

October 3, 2012

Matthew Stanley
California State Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

Dear Mr. Stanley:

On behalf of the 40,000 members of CalCPA, we offer the following comments and observations about the proposed regulatory changes in the Notice of Modified Text related to continuing education.

During the Board's May discussion on other potential changes to the CE requirements, the Board expressed concern that the 8 hour fraud requirement every two years was excessive since the qualifying courses frequently repeated the same material. In our September 10th letter, CalCPA recommended that the definition of qualifying courses be expanded from, "detection and reporting of fraud in financial statements" to, "prevention, detection and/or reporting of fraud affecting financial statements." CalCPA's recommendation to expand the qualifying content was accepted and is now shown in the modified text.

The expressed rationale for proposing a reduction in hours was the repetitive nature of the course material. No evidence was presented that the threat of financial statement fraud or the public's expectations regarding the detection of such fraud have decreased since the 8 hour requirement was adopted. The expanded definition of qualifying courses addresses that concern regarding a lack of new material and increases the protection of the public.

As our prior letter pointed out, fraud prevention is not just earlier detection of fraud, but is a distinct body of knowledge regarding controls and other deterrents that preclude or discourage the fraud before it is committed. Therefore, we firmly believe that there is clearly enough fresh material to justify retaining the current 8 hour fraud continuing education requirement. If that does not prove to be the case, reduction in the number of required fraud continuing education hours can be revisited after experience with the expanded content requirements has been obtained.

We have discussed the reduction in hours with a variety of member groups and not one has supported lessening the requirement to 4 hours. All believe that the 8 hour fraud requirement is essential to retaining the integrity of the CPA profession and protecting the public.

Our representatives at the September meeting misunderstood the motion that was made regarding the number of hours to be required. They thought that the Board was agreeing with the CalCPA recommendation to adopt the 8 hour requirement. After the meeting, they came to understand that the motion was to retain the 4 hour requirement in the proposal rather than retain the 8 hour existing requirement. The motion was proper and our representatives take full responsibility for the misunderstanding that caused them not to present the arguments in this letter during the Board's consideration of this matter. Our apologies for that, but we feel very strongly that since the definition of qualifying courses was expanded, there is no need reason for reducing the required hours at this time.

We appreciate the Board's consideration of our concerns and we would be interested in working with the Board on other possible alternatives related to the overall prescribed CPE hours.

Best regards,

Bruce C. Allen, Director
Government Relations

cc: Members, California Board of Accountancy

# CALIFORNIA BOARD OF ACCOUNTANCY
# REPORT ON LICENSING DIVISION ACTIVITY
# July 2012 – September 2012

**CBA Item VIII.A.**
November 15-16, 2012

| EXAMINATION | July | August | September |
|---|---|---|---|
| **CPA Examination Applications Received** | | | |
| First-Time Sitter | 740 | 748 | 602 |
| Repeat Sitter | 1,002 | 1,470 | 1,773 |
| **CPA Examination Applications Processed** | | | |
| First-Time Sitter | 1,240 | 844 | 1,179 |
| Repeat Sitter | 757 | 1,412 | 2,061 |
| **Processing Time Frames (Days)** | | | |
| First-Time Sitter | 32.5 | 34 | 26 |
| Repeat Sitter | 6 | 10 | 9 |
| **INITIAL LICENSING** | | | |
| **CPA Licensure Applications Received** | | | |
| CPA | 251 | 317 | 247 |
| Partnership | 7 | 5 | 3 |
| Corporation | 18 | 14 | 13 |
| Fictitious Name Permit (Registration) | 19 | 8 | 11 |
| **Processing Time Frames (Days)** | | | |
| CPA | 19 | 18 | 26 |
| Partnership | 7 | 9 | 13 |
| Corporation | 7 | 9 | 13 |
| Fictitious Name Permit (Registration) | 7 | 9 | 13 |
| **Applicants Licensed Under** | | | |
| Pathway 0 | 0 | 2 | 0 |
| Pathway 1A | 25 | 40 | 29 |
| Pathway 1G | 41 | 55 | 36 |
| Pathway 2A | 67 | 61 | 49 |
| Pathway 2G | 113 | 147 | 101 |

# CALIFORNIA BOARD OF ACCOUNTANCY
# REPORT ON LICENSING DIVISION ACTIVITY
# July 2012 – September 2012

| RENEWAL AND CONTINUING COMPETENCY | July | August | September |
|---|---|---|---|
| **Total Number of Licensees** | | | |
| CPA | 84,784 | 85,034 | 85,245 |
| PA | 121 | 120 | 119 |
| Partnership | 1,417 | 1,414 | 1,421 |
| Corporation | 3,736 | 3,744 | 3,755 |
| **Licenses Renewed** | | | |
| CPA | 3,162 | 2,883 | 3,261 |
| PA | 5 | 0 | 1 |
| Partnership | 49 | 48 | 35 |
| Corporation | 167 | 124 | 109 |
| **CE Worksheet Review** | | | |
| CPA/PA Applications Reviewed | 3,676 | 3,367 | 2,275 |
| Deficient Applications Identified | 567 | 455 | 371 |
| Compliance Responses Received *(Including Requests for Inactive Status)* | 263 | 47 | 9 |
| Enforcement Referrals | 0 | 0 | 0 |
| Outstanding Deficiencies *(Including Abandonment)* | 304 | 408 | 362 |
| **PRACTICE PRIVILEGE** | | | |
| **Notifications Received** | | | |
| Hardcopy | 18 | 35 | 18 |
| Electronic | 85 | 89 | 86 |
| **Disqualifying Conditions Received** | | | |
| Approved | 2 | 2 | 0 |
| Denied | 2 | 0 | 0 |
| Pending | 0 | 0 | 0 |
| **Practice Privilege Suspension Orders** | | | |
| Notice of Intent to Suspend | 4 | 6 | 4 |
| Administrative Suspension Order | 2 | 3 | 2 |

# CALIFORNIA BOARD OF ACCOUNTANCY
# REPORT ON LICENSING DIVISION ACTIVITY
# July 2012 – September 2012

## DIVISION ACTIVITIES

- Staff approved one Regulatory Review course bringing the total number of Board-approved courses to 21 with one provider electing not to renew its course. Staff is actively working with nine course providers to amend their course materials to be in compliance with the course content requirements, with an additional three courses pending initial review.

- Kris Rose, who managed the License Renewal and Continuing Competency Unit (RCC), recently took a position with CalFire and her last day with the CBA was October 30, 2012. As a result of Ms. Rose's departure, the Licensing Division is in the process of recruiting for a manager for the RCC Unit.

- The Examination Unit recently hired an Office Technician Permanent Intermittent.

- The Initial Licensing Unit continues to recruit for an Associate Governmental Program Analyst.

## NEW LICENSURE ACTIVITIES

- Staff will be speaking at California State University, East Bay on November 14, 2012. The focus of the speaking event will be on the new educational requirements for licensure.

- In September, President Oldman issued a letter to the California State University Board of Trustees as a result of recent news articles indicating that the various California State University campuses will be scaling back on admission for California students for the upcoming spring 2013 term (**Attachment 1**). The letter sought clarification regarding this policy to determine if this represented a onetime occurrence or if the policy is likely to exist for the foreseeable future. On October 25, 2012, Ephraim Smith, Executive Vice Chancellor and Chief Academic Officer, from the California State University Office of the Chancellor provided a response letter (**Attachment 2**).

## COMMITTEE NEWS

### CPA Qualifications Committee (QC)

The QC met on October 24, 2012 in Oakland, CA. The committee continued its discussion on a peer training plan that will be included in the QC Manual. At this point, the QC anticipates that it will complete its work on the peer training plan in early 2013.

CALIFORNIA BOARD OF ACCOUNTANCY

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Attachment 1

September 18, 2012

Robert Linscheid, President
Board of Trustees
California State University
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802-4210

Dear President Linscheid:

The California Board of Accountancy (CBA) is charged with regulating the practice of public accountancy, which includes both licensing and enforcement functions designed to ensure that only qualified licensees practice public accountancy in accordance with established professional standards. Presently, the CBA regulates over 85,000 licensees, including both certified public accountants (CPA) and accounting firms, and on average issues over 3,000 new CPA licenses annually.

In order to become a licensed CPA in California, the California Legislature has established minimum educational requirements for both qualification to take the Uniform CPA Examination and entry into the practice. Many of the CBA's applicants obtain their education at the 23 universities that make up the California State University (CSU) system, which offer California residents an opportunity to obtain an affordable high-quality education.

After reviewing the minutes of a recent CSU Board of Trustees meeting, as well as locating some recent news articles, it has become apparent that in an attempt to limit enrollment, the various CSU campuses will scale back on admission for California students for the upcoming spring 2013 term. Specifically, only non-California resident students will be admitted into the various graduate programs, and only 10 of the 23 campuses will accept some undergraduate applicants transferring from various community colleges.

The CBA recognizes the tremendous budget cuts the CSU system has incurred during these hard economic times, and, as a result, the Board of Trustees and campus presidents must make difficult decisions in what program areas to cut. That said, the CBA is concerned with the potential impact these present measures will have on students desiring to obtain a California CPA license.

As president of the CBA, I am seeking clarification regarding the recent action by the Board of Trustees to limit enrollment. Specifically, is the present enrollment practice for the upcoming spring 2013 term a onetime occurrence, or is this a policy that is likely to exist for the foreseeable future?

Again, the CBA understands the unenviable position the CSU system faces related to the ongoing budget cuts to the State's educational system, but the CBA is concerned that the present measures to limit enrollment for California residents could adversely impact future students' ability to earn a livelihood as CPAs.

Should you wish to discuss this matter further, please contact Patti Bowers, CBA Executive Officer, by telephone at (916) 561-1711 or by email at patti.bowers@cba.ca.gov.

Sincerely,

Marshal A. Oldman, Esq., President
California Board of Accountancy

c: Members, California Board of Accountancy
Patti Bowers, Executive Officer

The California State University
OFFICE OF THE CHANCELLOR

*Academic Affairs*
*401 Golden Shore, 6th Floor*
*Long Beach, CA 90802-4210*

*www.calstate.edu*

Attachment 2

*Ephraim P. Smith*
*Executive Vice Chancellor*
*and Chief Academic Officer*
*562-951-4710*
*Email esmith@calstate.edu*

October 25, 2012

Marshal A. Oldman
President
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

Dear President Oldman:

We appreciate the concerns you raise in your letter of September 18, 2012 regarding the impact of admission closure on the ordinary graduation rate of our future accountants.

As you correctly point out, the California State University has been forced to close admission to new students across the system for the spring 2012 term given the more than $1 billion cuts in our state allocation. While we are hopeful that the state will eventually restore the CSU budget, we cannot say definitively that similar closures will be unnecessary in the future.

While these budget cuts are certainly the primary reason for the closure, preserving the graduation rate of our current students is of equal concern. Ironically, this closure helps us to preserve authentic access to all of our programs, courses, and services in order for our continuing students to take full loads and complete their degree programs at a reasonable rate. Given the depth of these budget cuts, receiving more new students than we can support would frustrate the ability of continuing students to finish on time.

Because we have taken these measures, we do not anticipate any significant decline in the number of students preparing for the accountancy licensure. Moreover, closing admission in the spring typically raises the number of overall applicants we receive in the fall. Fall enrollments are subject to the budget of a new fiscal year.

Our CSU Presidents, Provosts, and Deans are aware of enrollment trends in each of our programs at each of our campuses. They have been invited to share the impact these closures may have on enrollment in any program should something of an unexpected nature surface.

Additionally, accounting students (across the CSU) who want to sit for the CPA have the opportunity to complete a 4+1 type program with a standard undergraduate degree (most are at or near 120 units). Then, those students may complete a one year post-baccalaureate program to obtain the other 30 units needed to sit for the CPA. Moving programs to 120 units will not adversely affect accounting students who need the additional 30 units.

Thank you again for your letter. If you, Patti Bowers, or other members of the California Board of Accountancy have additional questions, please contact me at (562) 951- 4710 or at esmith@calstate.edu.

Sincerely,

Ephraim P. Smith
Executive Vice Chancellor and Chief Academic Officer

ES/th

c: Chancellor Charles B. Reed
Robert Linscheid, Chair, California State University, Board of Trustees
Henry Mendoza, Member, Board of Trustees
Patti Bowers, Executive Officer, California Board of Accountancy

# California Board of Accountancy
# Enforcement Activity Report

As of October 15, 2012

## Complaints

The Enforcement Division has received 475 complaints since July 1, 2012. Of the complaints received, 316 were assigned for investigation, with an average of six days from the time the complaint is received to when it is either closed or assigned to investigation.

| **1.1 – Complaints/Records of Convictions** | FY 2010/11 | FY 2011/12 | YTD 10/15/12 |
|---|---|---|---|
| Received | 854 | 1,911 | 475 |
| Closed without Assignment for Investigation | 232 | 294 | 159 |
| Assigned for Investigation | 601 | 1,626 | 316 |
| Average Days to Close or Assign for Investigation | 5 | 4 | 6 |
| Pending | 22 | 12 | 2 |
| Average Age of Pending Complaints (days)[1] | 5 | 16 | 8 |

[1] Represents data as of the end of the fiscal year, and as of October 15, 2012.

Comments

- The 475 complaints received results in a projected average of approximately 1,662, which is a slight decrease from the previous fiscal year.
- The Average Days to Close or Assign for Investigation remains consistent with the two previous reporting periods.
- The Average Age of Pending Complaints remains below the last fiscal year.

## Investigations

The CBA Enforcement Division has assigned 316 cases for investigation in the current fiscal year. Enforcement staff has closed 356 investigations, and there are currently 399 cases assigned for investigation.

| **2.1 – Investigations** | FY 2010/11 | FY 2011/12 | YTD 10/15/12 |
|---|---|---|---|
| Assigned | 601 | 1,626 | 316 |
| Closed | 464 | 1,525 | 357 |
| Average Days to Close | 130 | 85 | 245 |
| Investigations Pending[1] | 334 | 439 | 399 |
| *< 18 Months* | *301* | *384* | *374* |
| *18-24 Months* | *21* | *26* | *12* |
| *> 24 Months* | *12* | *29* | *13* |
| Average Age of Open Cases (days)[1] | 238 | 248 | 188 |
| Median Age of Open Cases (days)[1] | 157 | 164 | 102 |

[1] Represents data as of the end of the fiscal year, and as of October 15, 2012.

Comments

- The 316 cases assigned for investigation averages to 1,106 for the fiscal year, which is a slight decrease from the previous fiscal year.
- The Average Days to Close an investigation remains higher than the previous fiscal years; however, the number has decreased from 294 as reported at the last CBA meeting.
- Of the 13 cases that have been open for more than 24 months:
    - Four were scheduled for an Investigative Hearing (IH) in October
        - Three were recommended for discipline
        - One was recommended for closure
        - Once the hearing transcript is received from the court reporter, the three cases recommended for discipline will be forwarded to the AG's Office
    - Two are scheduled for an IH in November
    - Three will be scheduled for an IH in December
    - Two will be referred to the Attorney General in late October
    - Two others are currently under investigation
- The Enforcement Division is currently pursuing criminal complaints against two unlicensed individuals; one was referred to the Santa Clara District Attorney, and the other to the Anaheim City Attorney.
- Staff is preparing a Penal Code 23 intervention, which will stop a licensee from practicing while their criminal case is pending.
- The number of Investigations Pending decreased from 506 in the previous reporting period to 399.
- The Median and Average Age of Open Cases continue to remain lower than the previous two fiscal years.

Chart 2.2 illustrates the percentage of total open cases by length of time. Ninety-four percent of investigations have been open for less than 18 months, three percent of investigations have been from 18 to 24 months, and three percent over 24 months.

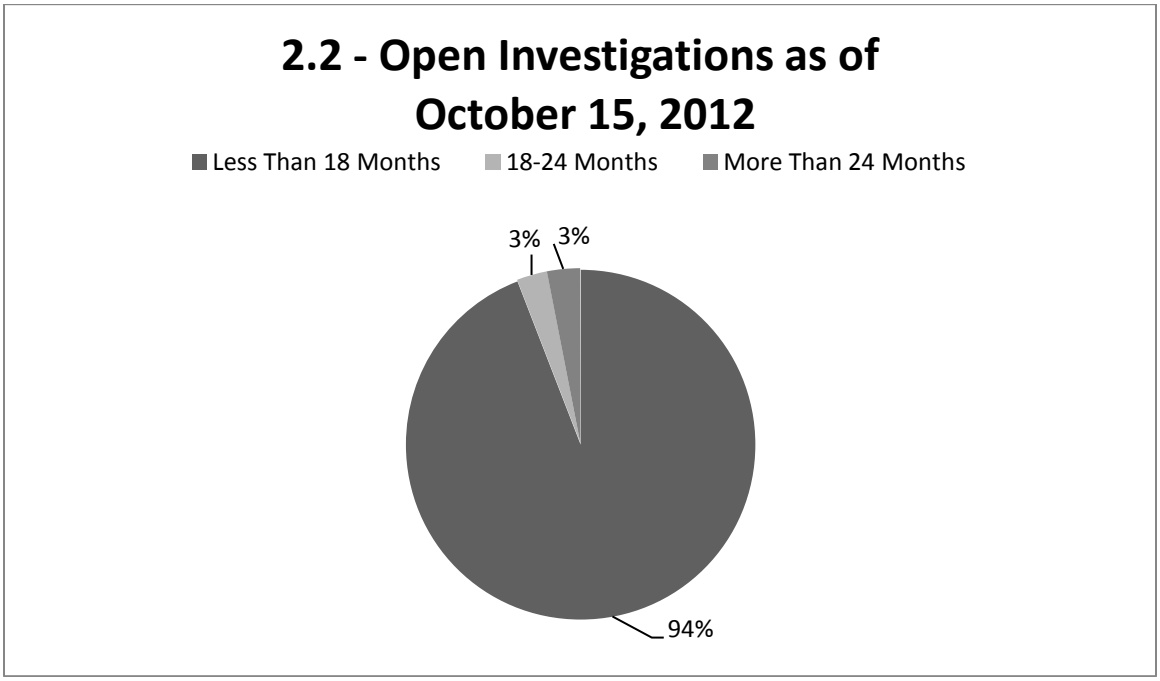
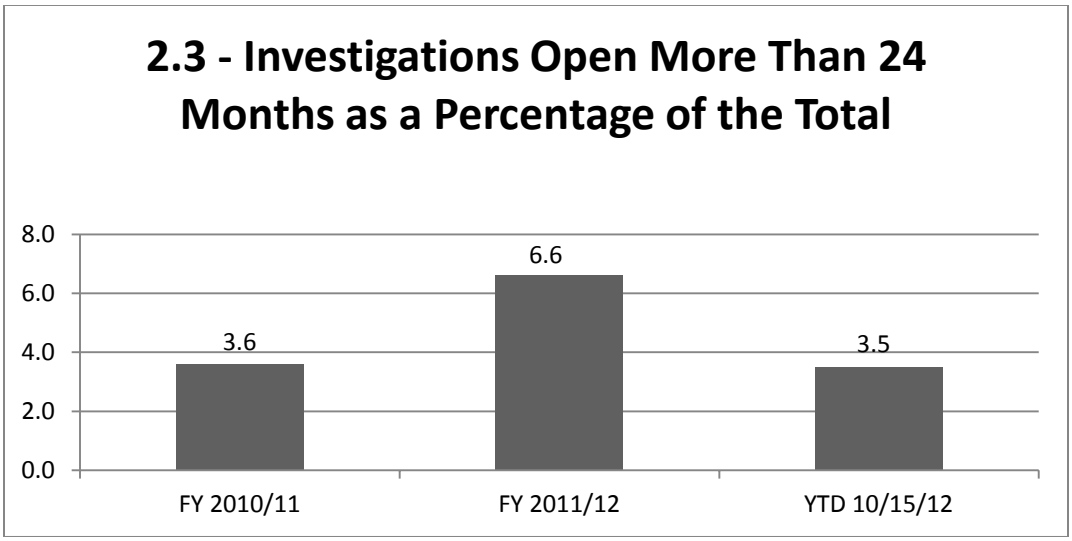



Chart 2.3 illustrates the case aging trend, comparing the current percentage of cases older than 24 months to the end of the previous two fiscal years. The chart shows the percentage of cases open for more than 24 months has decreased from 6.6 percent in the prior fiscal year to 3.5 percent.



## Discipline

As of October 15, 2012 the Enforcement Division has referred 17 complaints to the Attorney General's (AG) Office. There have been nine accusations filed and 16 disciplinary actions adopted. Of the 16 actions adopted, 12 were stipulated settlements, two were default decisions, and two were proposed decisions. There are currently 55 cases pending at the AG, with three pending for more than 24 months.

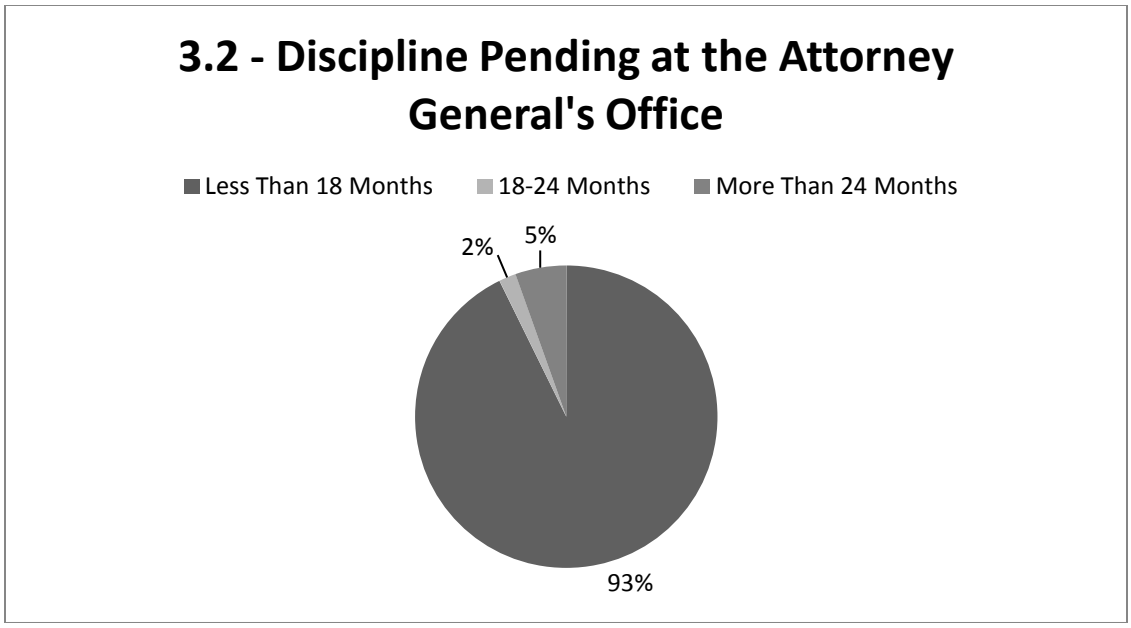
| **3.1 - AG Referrals** | FY 2010/11 | FY 2011/12 | YTD 10/15/12 |
|---|---|---|---|
| Referrals | 24 | 50 | 17 |
| Accusations Filed | 20 | 37 | 9 |
| Statements of Issues Filed | 0 | 2 | 0 |
| Petitions for Revocation of Probation | 2 | 3 | 0 |
| Closed | 22 | 26 | 16 |
| *Via Stipulated Settlement* | *12* | *19* | *12* |
| *Via Proposed Decision* | *6* | *3* | *2* |
| *Via Default Decision* | *4* | *4* | *2* |
| Discipline Pending[1] | 37 | 54 | 55 |
| *< 18 Months* | *32* | *44* | *51* |
| *18-24 Months* | *2* | *3* | *1* |
| *> 24 Months* | *3* | *7* | *3* |

[1] Represents data as of the end of the fiscal year, and as of October 15, 2012.

Comments

- There are three cases that have been at the AG's Office for more than 24 months, which is a reduction from five in the previous report. Of the three that have been pending for more than 24 months:
  - One of the cases had a write filed with the California Superior Court, and a hearing is pending.
  - One is scheduled for hearing at the Office of Administrative Hearings (OAH) in December 2012.
  - A final case was heard by an Administrative Law Judge (ALJ) in June, and will be presented to the CBA in November.
- To date, 16 disciplinary cases have been adopted by the CBA.

Chart 3.2 illustrates the number of cases pending at the AG's Office by percentage. Approximately 93 percent of all CBA cases at the AG's Office have been open less than 18 months, two percent have been pending 18-24 months, and five percent have been pending more than 24 months.



## Citations and Fines

CBA Regulation 95 authorizes the CBA Executive Officer to issue a citation to licensees for violations of the Accountancy Act or CBA Regulations in lieu of formal disciplinary action. To date, 26 citations, with a total fine amount of $21,400 have been issued by the Enforcement Division.

| **4.1 - Citations** | FY 2010/11 | FY 2011/12 | YTD 10/15/12 |
|---|---|---|---|
| Total Citations Issued | 30 | 908 | 26 |
| Total Fines Assessed | $26,850 | $255,350 | $21,400 |
| Average number of days from receipt of a complaint to issuance of a citation | 268 | 22 | 306 |
| Top 3 Violations | | | |
| 1: | Response to CBA Inquiry (Reg 52) | Response to CBA Inquiry (Reg 52) | Response to CBA Inquiry (Reg 52) |
| 2: | CE Basic Requirements (Reg 87) | CE Basic Requirements (Reg 87) | CE Basic Requirements (Reg 87) |
| 3: | Practice Without Permit (B&P 5050) | Name of Firm (B&P 5060) | Name of Firm (B&P 5060) |

Comments

- Of the 908 citations issued in fiscal year 2011/12, 872 were issued for failure to respond to a peer review reporting requirement.
- Excluding peer review, in fiscal year 2011/12 there were 36 citations issued, for a total fine amount of $37,500.
- The average number of days, (306) has decreased from 320 as reported in the previous report.

## Probation Monitoring

Once the disciplinary process is complete, the matter is referred to a CBA Probation Monitor for tracking and compliance with the terms of probation. As of October 15, 2012, there were 62 licensees on probation. Seven additional licensees were placed on probation as a result of CBA action at the September meeting. Seven probation meetings were held in conjunction with the Enforcement Advisory Committee meeting in Los Angeles on October 18, 2012.

## Peer Review

As of October 15, 2012, 48,444 Peer Review Reporting Forms have been submitted to the CBA. The reporting forms are categorized as follows:

| 5.1 - Peer Review | | | | | | |
|---|---|---|---|---|---|---|
| License Ending In | Reporting Deadline | Peer Review Required | Peer Review Not Required | Not Applicable (Non-firms) | Total | Number of Failed Peer Review Reports Received |
| 01-33 | 7/1/11 | 2,405 | 4,243 | 15,540 | 22,188 | 101 |
| 34-66 | 7/1/12 | 1,535 | 3,530 | 11,604 | 16,669 | 73 |
| 67-00 | 7/1/13 | 561 | 1,859 | 7,167 | 9,587 | 35 |
| | | 4,501 | 9,632 | 34,311 | 48,444 | 209 |

Correspondence to Licensees

In September, Enforcement staff sent approximately 4,200 deficiency letters to licensees who were required to submit a Peer Review Reporting Form by July 1, 2012. Licensees have until October 31, 2012 to respond to the letter, otherwise citations will be issued.

Citations Issued to Licensees that Failed to Respond to CBA

In fiscal year 2011/12, Enforcement staff issued 872 citations to licensees who failed to respond to the CBA's requests for peer review information. Each citation included a $250 administrative fine and an order of correction requiring the licensee to submit the Peer Review Reporting Form within thirty days.

The following data is as of October 15, 2012.

| 5.2 - Peer Review Citations | |
|---|---|
| Closed – Paid | 443 |
| Closed – Payment Added to Renewal Fee | 116 |
| Paid – Waiting for Peer Review Reporting Form | 28 |
| Appeal Affirmed – Waiting for Payment | 70 |
| Appeal Affirmed – Waiting for Peer Review Reporting Form | 13 |
| Appeal – Withdrawn | 162 |
| Pending Administrative Hearing | 35 |

Verification of Peer Review Reporting Forms

Enforcement staff continue to review the Peer Review Reporting Forms of licensees that reported they are operating as a firm but not subject to peer review. To date, staff has reviewed 482 reporting forms.

Based on information obtained from licensees' renewal applications, 115 licensees have been referred to Enforcement. These licensees are being asked to provide the CBA with a description of their highest level attestation engagement, and copies of their timesheets and invoices for a specific period of time.

Failed Peer Reviews

As requested at the last CBA meeting, staff posted links to the CalCPA website which contains educational information about the peer review. CBA staff also posted the top nine most common reasons when a failed peer review is issued by the American Institute of Certified Public Accountants administrative entities, including the CalCPA and NPRC.

## Reportable Events

The following chart is a list of complaints received that resulted from reportable events as defined by Business and Professions Code Section 5063.

| **6.1 – Reportable Events** | FY 2010/11 | FY 2011/12 | YTD 10/15/12 |
|---|---|---|---|
| Felony or Criminal Conviction | 3 | 3 | 0 |
| Cancellation, Revocation, Or Suspension By Another State Or Agency | 8 | 4 | 0 |
| Restatements | | | |
| • Governmental | 112 | 106 | 5 |
| • Non-Profit | 16 | 7 | 1 |
| Civil Action Settlement/Arbitration Award | 16 | 11 | 2 |
| SEC Investigation / Wells Submission | 2 | 2 | 1 |
| PCAOB Investigations – 5063(B)(5) | 6 | 2 | 0 |
| Civil Action or Judgment – 5063(C)(1-5) | 0 | 3 | 0 |
| Reporting By Insurers/Courts – 5063.2 | 26 | 18 | 0 |
| **Total** | 192 | 164 | 9 |

Comments

- Not all reportable events received result in an investigation being opened.
- Licensees will often self report a criminal conviction before sentencing, or an SEC investigation before final action. However, disciplinary action cannot be taken until final disposition of the other civil, criminal, or administrative action. Therefore, these complaints are tracked until final disposition.
- Of the 164 reportable events received by the CBA in fiscal year 2011/12, 106, or 65 percent, were restatements.
- Of the 51 reportable events received in fiscal year 2011/12 that were not from a restatement, 33 percent were opened for investigation.
- The average time to complete an SEC investigation in fiscal year 2011/12 was 12.4 months, with six SEC investigations ongoing.
- The average time to complete a PCAOB investigation in fiscal year 2011/12 was 11 months, with three investigations ongoing.

**Division Highlights and Future Considerations**

- Since the last report, the Enforcement Division has reduced investigations pending by over 100.
- Enforcement Division maintains aggressive pursuit of unlicensed activity, with complaints referred to a District and City Attorney.
- Approximately 94 percent of all investigations have been open less than 18 months.
- Educational resources regarding peer review were posted on the CBA website in order to educate licensees about common pitfalls.
- In November, the Enforcement Division will be reorganized to further streamline investigative and support processes.

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**CPC Item II.**
November 15, 2012

**CBA Item X.A.2.**
November 15-16, 2012

# Project Plan for Implementation of the Practice Privilege Provisions for Senate Bill 1405 Set to Take Effect July 1, 2013

**Presented by:** Dominic Franzella, Licensing Chief
**Date:** October 30, 2012

---

## Purpose of the Item

The purpose of this item is to provide the California Board of Accountancy (CBA) with information on activities being undertaken by staff related to implementing the new practice privilege provisions recently included in Senate Bill (SB) 1405. Additionally, the item will provide members with anticipated dates on when items will be brought to the CBA for action and when the CBA is mandated to provide certain reports to various stakeholders.

## Action(s) Needed

No specific action is required on this agenda item.

## Background

On September 20, 2012 Governor Brown signed into law SB 1405, which included two changes to the California Accountancy Act. First, the bill established the ability for active duty service members to apply for and receive a military inactive status. Second, the bill significantly modified the CBA's practice privilege provisions, with one of the more important changes being that in most cases out-of-state CPAs who are licensed to practice public accountancy in another jurisdiction can do so in California without having to notify the CBA and without paying a fee.

## Comments

With the expectation that the Governor would eventually sign SB 1405 into law and recognizing early on the far-reaching effect the bill would have on the CBA's practice privilege provisions, staff began meeting in late July to discuss implementation. As a result of these early meetings, an internal taskforce was established, comprised of senior management and key program staff, with the express purpose of developing and carrying out the implementation plan associated with new practice privilege provisions.

The implementation plan (**Attachment 1**) provides an outline of the key tasks associated with implementing the practice privilege provisions, in addition to various tasks that occur after the provisions take effect July 1, 2013. For the implementation

plan, staff has identified six key areas – (1) Rulemaking Activities, (2) Outreach, (3) Website, (4) Reports to Various Stakeholders, (5) Practice Privilege Stakeholder Taskforce, and (6) CBA Determinations. Staff has highlighted in bold font style the various tasks for each area where the CBA will be called upon to consider an issue or act on an issue or both.

Although this high-level implementation plan seeks to address all know implementation-related issues and to identify when tasks should reasonably be accomplished, staff realizes that the implementation plan will be an evolving document and, as such, tasks and dates will be modified as necessary.

**Fiscal/Economic Impact Considerations**
None.

**Recommendation**
Although no CBA action is required for this agenda item, as always, staff would value any feedback members may have regarding the project plan for implementation of SB 1405.

**Attachments**
1. Senate Bill 1405 – Practice Privilege Provisions Implementation Plan
2. Senate Bill 1405 – Practice Privilege Provisions Set to Take Effect July 1, 2013

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**Attachment 1**

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **1.** | **RULEMAKING ACTIVITIES** | | | | |
| *1.1.* | *Emergency Rulemaking* | | | | |
| 1.1.1. | Draft regulatory language | September 2012 | October 2012 | Staff | |
| **1.1.2.** | **CBA approval of draft regulatory language** | **November 2012 CBA Meeting** | **January 2013 CBA Meeting** | **CBA** | |
| 1.1.3. | Draft required emergency rulemaking materials | November 2012 | February 2013 | Staff | Includes the preparation of the Finding of Emergency and Fiscal/Economic Impact Statement |
| **1.1.4.** | **CBA final approval of language** | **March 2013 CBA Meeting** | **March 2013 CBA Meeting** | **CBA** | Only necessary if the CBA makes substantial changes to the draft regulatory language in January and direct staff to bring back the language prior to final approval |
| 1.1.5. | DCA and State and Consumer Services Agency (SCSA) review emergency rulemaking materials | Mid April 2013 | Mid June 2013 | DCA/SCSA | |
| 1.1.6. | Send emergency regulation materials to the CBA's interested parties list and post to the CBA's website. | Mid June 2013 | Mid June 2013 | Staff | Staff will perform this at a minimum of five days prior to submitting to the Office of Administrative Law (OAL). |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| 1.1.7. | OAL reviews and renders determination on emergency regulations | Mid/Late June 2013 | Mid/Late June 2013 | Staff | OAL has 10 calendar days to review the emergency rulemaking materials. Staff will request an operative date of July 1, 2013 for the regulations. |
| 1.1.8. | Practice Privilege regulations take effect for 180 days | July 1, 2013 | December 27, 2013 | | |
| **1.1.9.** | **CBA re-adoption – 1st** | **November 2013 CBA Meeting** | **November 2013 CBA Meeting** | **CBA** | If the Certification of Compliance (detailed in 1.2) rulemaking process is not yet complete prior to the conclusion of the 180 days, the CBA can request two additional 90-day extensions. |
| 1.1.10. | 1st re-adoption effective | December 27, 2013 | March 27, 2014 | | |
| **1.1.11.** | **CBA re-adoption – 2nd** | **January 2014 CBA Meeting** | **January 2014 CBA Meeting** | **CBA** | |
| 1.1.12. | 2nd re-adoption effective | March 27, 2014 | June 25, 2014 | | |
| *1.2.* | *Certification of Compliance and Regular Rulemaking Materials* | | | | |
| 1.2.1. | Prepare certification of compliance | November 2012 | December 2012 | Staff | The certification of compliance is, in essence, a regular rulemaking. |
| **1.2.2.** | **CBA approval of draft regulatory language** | **March 2013 CBA Meeting** | **March 2013 CBA Meeting** | **CBA** | |
| 1.2.3. | Submit certification of compliance and regular rulemaking materials to OAL and DCA | April 2013 | April 2013 | Staff | |
| 1.2.4. | Notify interested parties of the rulemaking | April 2013 | April 2013 | Staff | |
| 1.2.5. | Public comment period | April 2013 | May 2013 | Public | Individuals can provide written comments at any time during the 45-day public comment period. |
| **1.2.6.** | **CBA conducts public hearing and approves final regulatory language** | **July 2013 CBA Meeting** | **July 2013 CBA Meeting** | **CBA** | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| 1.2.7. | Prepare and post 15-day re-notice | August 2013 | August 2013 | Staff | Only necessary if the CBA makes changes to the language as a result of public comments received in writing or at the hearing or if technical changes are identified by the CBA or staff |
| 1.2.8. | Complete Certificate of Compliance rulemaking file | Late August 2013 | Late September 2013 | Staff | |
| 1.2.9. | DCA, SCSA, and DOF review Certificate of Compliance rulemaking file. | Late September 2013 | March 2014 | DCA/SCSA/DOF | |
| 1.2.10. | OAL reviews and renders determination on final regulations | Mid April 2014 | Late June 2014 | OAL | |
| 1.2.11. | Practice privilege regulations become final | Late June 2014 | On or before July 1, 2014 | | |
| **2.** | **OUTREACH** | | | | |
| *2.1.* | *Press Releases* | | | | |
| 2.1.1. | Issue press release upon signing of SB 1405 | August 2012 | September 20, 2012 | Staff | Complete |
| 2.1.2. | Issue press release prior to new provisions taking effect July 1, 2013 | June 2013 | June 2013 | Staff | |
| *2.2.* | *Update Articles* | | | | |
| 2.2.1. | Develop article for Fall 2012 edition | August 2012 | September 2012 | Staff | Complete |
| 2.2.2. | Develop article for Spring 2013 edition | October 2012 | January 2013 | Staff | Articles will focus on pertinent information related to getting the word out on California's practice privilege provision |
| 2.2.3. | Develop article for Fall 2013 edition | August 2013 | September 2013 | Staff | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| *2.3.* | *Miscellaneous* | | | | |
| 2.3.1. | Mail letter to present and prior practice privilege holders regarding new practice privilege provisions | January 2013 | January 2013 | Staff | |
| 2.3.2. | Explore options for communication opportunities via social media | January 2013 | Ongoing | Staff | |
| **3.** | **WEBSITE** | | | | |
| *3.1.* | *License Lookup – Consumers* | | | | |
| 3.1.1. | Redesign/develop web pages for License Lookup | October 2012 | April 2013 | Staff | Web License Lookup feature will be developed, at a minimum, in conformity with Business and Professions (B&P) Code Section 5096.20 |
| **3.1.2.** | **CBA review of website** | **May 2013 CBA Meeting** | **May 2013 CBA Meeting** | **CBA** | |
| 3.1.3. | Redesigned License Lookup feature goes live | July 1, 2013 | July 1, 2013 | Staff | |
| *3.2.* | *Out-of-State CPA/Accounting Firm Information* | | | | |
| 3.2.1. | Create practice privilege informational page to guide out-of-state CPAs and accounting firms regarding California's mobility provisions | October 2012 | April 2013 | Staff | |
| **3.2.2.** | **CBA review of website** | **May 2013 CBA Meeting** | **May 2013 CBA Meeting** | **CBA** | |
| 3.2.3. | Out-of-state CPAs/accounting firm information and forms goes live | July 1, 2013 | July 1, 2013 | Staff | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **4.** | **REPORTS TO VARIOUS STAKEHOLDERS** | | | | |
| 4.1. | Prepare draft preliminary report due no later than July 1, 2015 | January 2015 | February 2015 | Staff | Pursuant to B&P Code Section 5096(d)(1)<br><br>Report will go to the Legislature, Director of DCA, and made available to the public upon request (which will be accomplished via posting to the CBA website) |
| **4.2.** | **CBA review and approve draft preliminary report due no later than July 1, 2015** | **March 2015 CBA Meeting** | **May 2015 CBA Meeting** | **CBA** | |
| 4.3. | Submission of preliminary report due no later than July 1, 2015 | June 2015 | June 2015 | Staff | Report will also be posted to the CBA website |
| 4.4. | Draft report due on or before January 1, 2018 | July 2017 | August 2017 | Staff | Pursuant to B&P Code Section 5096(f)<br><br>Report will go to the relevant policy committees of the Legislature, Director of DCA, and made available to the public upon request (which will be accomplished via posting to the CBA website) |
| **4.5.** | **CBA review and approve draft report due on or before January 1, 2018** | **September 2017 CBA Meeting** | **November 2017 CBA Meeting** | **CBA** | |
| 4.6. | Submission of report due on or before January 1, 2018 | December 2017 | December 2017 | Staff | Report will also be posted to the CBA website |
| **5.** | **PRACTICE PRIVILEGE STAKEHOLDER TASKFORCE (Taskforce)** | | | | |
| **5.1.** | **CBA considers composition of the Taskforce** | **September 2013 CBA Meeting** | **November 2013 CBA Meeting** | **CBA** | Pursuant to B&P Code Section 5096.21 – must include members of the CBA, CBA enforcement staff, representatives of the accounting profession, and consumer representatives<br><br>No specific number of stakeholders provided for in the bill |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **5.2.** | **CBA appoints stakeholders to the Taskforce** | **March 2014 CBA Meeting** | **March 2014 CBA Meeting** | **CBA** | First meet must occur on or before July 1, 2014 |
| 5.3. | Taskforce meeting – 1st | May 2014 | May 2014 | Taskforce | Will be held in conjunction with the May 2014 CBA meeting |
| 5.4. | Taskforce meetings – ongoing | TBD | TBD | Taskforce | |
| **6.** | **CBA Determinations** | | | | |
| **6.1.** | **State-by-state determination** | **January 2016 CBA Meeting** | **January 2016 CBA Meeting** | **CBA** | See subdivisions (a) and (b) of B&P Code Section 5096 |
| **6.2.** | **State-by-state determination** | **TBD** | **TBD** | **CBA** | CBA may, as it deems necessary, review its determinations |

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**Attachment 1**

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **1.** | **RULEMAKING ACTIVITIES** | | | | |
| *1.1.* | *Emergency Rulemaking* | | | | |
| 1.1.1. | Draft regulatory language | September 2012 | October 2012 | Staff | |
| **1.1.2.** | **CBA approval of draft regulatory language** | **November 2012 CBA Meeting** | **January 2013 CBA Meeting** | **CBA** | |
| 1.1.3. | Draft required emergency rulemaking materials | November 2012 | February 2013 | Staff | Includes the preparation of the Finding of Emergency and Fiscal/Economic Impact Statement |
| **1.1.4.** | **CBA final approval of language** | **March 2013 CBA Meeting** | **March 2013 CBA Meeting** | **CBA** | Only necessary if the CBA makes substantial changes to the draft regulatory language in January and direct staff to bring back the language prior to final approval |
| 1.1.5. | DCA and State and Consumer Services Agency (SCSA) review emergency rulemaking materials | Mid April 2013 | Mid June 2013 | DCA/SCSA | |
| 1.1.6. | Send emergency regulation materials to the CBA's interested parties list and post to the CBA's website. | Mid June 2013 | Mid June 2013 | Staff | Staff will perform this at a minimum of five days prior to submitting to the Office of Administrative Law (OAL). |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| 1.1.7. | OAL reviews and renders determination on emergency regulations | Mid/Late June 2013 | Mid/Late June 2013 | Staff | OAL has 10 calendar days to review the emergency rulemaking materials. Staff will request an operative date of July 1, 2013 for the regulations. |
| 1.1.8. | Practice Privilege regulations take effect for 180 days | July 1, 2013 | December 27, 2013 | | |
| **1.1.9.** | **CBA re-adoption – 1st** | **November 2013 CBA Meeting** | **November 2013 CBA Meeting** | **CBA** | If the Certification of Compliance (detailed in 1.2) rulemaking process is not yet complete prior to the conclusion of the 180 days, the CBA can request two additional 90-day extensions. |
| 1.1.10. | 1st re-adoption effective | December 27, 2013 | March 27, 2014 | | |
| **1.1.11.** | **CBA re-adoption – 2nd** | **January 2014 CBA Meeting** | **January 2014 CBA Meeting** | **CBA** | |
| 1.1.12. | 2nd re-adoption effective | March 27, 2014 | June 25, 2014 | | |
| *1.2.* | *Certification of Compliance and Regular Rulemaking Materials* | | | | |
| 1.2.1. | Prepare certification of compliance | November 2012 | December 2012 | Staff | The certification of compliance is, in essence, a regular rulemaking. |
| **1.2.2.** | **CBA approval of draft regulatory language** | **March 2013 CBA Meeting** | **March 2013 CBA Meeting** | **CBA** | |
| 1.2.3. | Submit certification of compliance and regular rulemaking materials to OAL and DCA | April 2013 | April 2013 | Staff | |
| 1.2.4. | Notify interested parties of the rulemaking | April 2013 | April 2013 | Staff | |
| 1.2.5. | Public comment period | April 2013 | May 2013 | Public | Individuals can provide written comments at any time during the 45-day public comment period. |
| **1.2.6.** | **CBA conducts public hearing and approves final regulatory language** | **July 2013 CBA Meeting** | **July 2013 CBA Meeting** | **CBA** | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| 1.2.7. | Prepare and post 15-day re-notice | August 2013 | August 2013 | Staff | Only necessary if the CBA makes changes to the language as a result of public comments received in writing or at the hearing or if technical changes are identified by the CBA or staff |
| 1.2.8. | Complete Certificate of Compliance rulemaking file | Late August 2013 | Late September 2013 | Staff | |
| 1.2.9. | DCA, SCSA, and DOF review Certificate of Compliance rulemaking file. | Late September 2013 | March 2014 | DCA/SCSA/DOF | |
| 1.2.10. | OAL reviews and renders determination on final regulations | Mid April 2014 | Late June 2014 | OAL | |
| 1.2.11. | Practice privilege regulations become final | Late June 2014 | On or before July 1, 2014 | | |
| **2.** | **OUTREACH** | | | | |
| *2.1.* | *Press Releases* | | | | |
| 2.1.1. | Issue press release upon signing of SB 1405 | August 2012 | September 20, 2012 | Staff | Complete |
| 2.1.2. | Issue press release prior to new provisions taking effect July 1, 2013 | June 2013 | June 2013 | Staff | |
| *2.2.* | *Update Articles* | | | | |
| 2.2.1. | Develop article for Fall 2012 edition | August 2012 | September 2012 | Staff | Complete |
| 2.2.2. | Develop article for Spring 2013 edition | October 2012 | January 2013 | Staff | Articles will focus on pertinent information related to getting the word out on California's practice privilege provision |
| 2.2.3. | Develop article for Fall 2013 edition | August 2013 | September 2013 | Staff | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| *2.3.* | *Miscellaneous* | | | | |
| 2.3.1. | Mail letter to present and prior practice privilege holders regarding new practice privilege provisions | January 2013 | January 2013 | Staff | |
| 2.3.2. | Explore options for communication opportunities via social media | January 2013 | Ongoing | Staff | |
| **3.** | **WEBSITE** | | | | |
| *3.1.* | *License Lookup – Consumers* | | | | |
| 3.1.1. | Redesign/develop web pages for License Lookup | October 2012 | April 2013 | Staff | Web License Lookup feature will be developed, at a minimum, in conformity with Business and Professions (B&P) Code Section 5096.20 |
| **3.1.2.** | **CBA review of website** | **May 2013 CBA Meeting** | **May 2013 CBA Meeting** | **CBA** | |
| 3.1.3. | Redesigned License Lookup feature goes live | July 1, 2013 | July 1, 2013 | Staff | |
| *3.2.* | *Out-of-State CPA/Accounting Firm Information* | | | | |
| 3.2.1. | Create practice privilege informational page to guide out-of-state CPAs and accounting firms regarding California's mobility provisions | October 2012 | April 2013 | Staff | |
| **3.2.2.** | **CBA review of website** | **May 2013 CBA Meeting** | **May 2013 CBA Meeting** | **CBA** | |
| 3.2.3. | Out-of-state CPAs/accounting firm information and forms goes live | July 1, 2013 | July 1, 2013 | Staff | |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **4.** | **REPORTS TO VARIOUS STAKEHOLDERS** | | | | |
| 4.1. | Prepare draft preliminary report due no later than July 1, 2015 | January 2015 | February 2015 | Staff | Pursuant to B&P Code Section 5096(d)(1)<br><br>Report will go to the Legislature, Director of DCA, and made available to the public upon request (which will be accomplished via posting to the CBA website) |
| **4.2.** | **CBA review and approve draft preliminary report due no later than July 1, 2015** | **March 2015 CBA Meeting** | **May 2015 CBA Meeting** | **CBA** | |
| 4.3. | Submission of preliminary report due no later than July 1, 2015 | June 2015 | June 2015 | Staff | Report will also be posted to the CBA website |
| 4.4. | Draft report due on or before January 1, 2018 | July 2017 | August 2017 | Staff | Pursuant to B&P Code Section 5096(f)<br><br>Report will go to the relevant policy committees of the Legislature, Director of DCA, and made available to the public upon request (which will be accomplished via posting to the CBA website) |
| **4.5.** | **CBA review and approve draft report due on or before January 1, 2018** | **September 2017 CBA Meeting** | **November 2017 CBA Meeting** | **CBA** | |
| 4.6. | Submission of report due on or before January 1, 2018 | December 2017 | December 2017 | Staff | Report will also be posted to the CBA website |
| **5.** | **PRACTICE PRIVILEGE STAKEHOLDER TASKFORCE (Taskforce)** | | | | |
| **5.1.** | **CBA considers composition of the Taskforce** | **September 2013 CBA Meeting** | **November 2013 CBA Meeting** | **CBA** | Pursuant to B&P Code Section 5096.21 – must include members of the CBA, CBA enforcement staff, representatives of the accounting profession, and consumer representatives<br><br>No specific number of stakeholders provided for in the bill |

**SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS**
**IMPLEMENTATION PLAN**

**DEVELOPED BY: Senate Bill 1405 Taskforce**

| TASK # | TASK NAME | START DATE | FINISH DATE | RESPONSIBLE PARTY | STATUS/COMMENTS |
|---|---|---|---|---|---|
| **5.2.** | **CBA appoints stakeholders to the Taskforce** | **March 2014 CBA Meeting** | **March 2014 CBA Meeting** | **CBA** | First meet must occur on or before July 1, 2014 |
| 5.3. | Taskforce meeting – 1st | May 2014 | May 2014 | Taskforce | Will be held in conjunction with the May 2014 CBA meeting |
| 5.4. | Taskforce meetings – ongoing | TBD | TBD | Taskforce | |
| **6.** | **CBA Determinations** | | | | |
| **6.1.** | **State-by-state determination** | **January 2016 CBA Meeting** | **January 2016 CBA Meeting** | **CBA** | See subdivisions (a) and (b) of B&P Code Section 5096 |
| **6.2.** | **State-by-state determination** | **TBD** | **TBD** | **CBA** | CBA may, as it deems necessary, review its determinations |

**Attachment 2**

# SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS SET TO TAKE EFFECT JULY 1, 2013

## BUSINESS AND PROFESSIONS CODE

### Section 5070

Permits to engage in the practice of public accountancy in this state shall be issued by the board only to holders of the certificate of certified public accountant issued under this chapter and to those partnerships, corporations, and other persons who, upon application approved by the board, are registered with the board under this chapter. Notwithstanding any other provision of law, the board may register an entity organized and authorized to practice public accountancy under the laws of another state for the purpose of allowing that entity to satisfy the registration requirement set forth in Section 5096.12, provided that (1) the certified public accountants providing services in California qualify for the practice privilege, and (2) the entity satisfies all other requirements to register in this state, other than its form of legal organization.

All applicants for registration shall furnish satisfactory evidence that the applicant is entitled to registration and shall pay the fee as provided in Article 8 (commencing with Section 5130). Every partnership, corporation, and other person to whom a permit is issued after December 31, 1962, shall, in addition to any other fee which may be payable, pay the initial permit fee provided in Article 8 (commencing with Section 5130). Each partnership, corporation, and other person issued a permit by the board to practice as a certified public accountant or as a public accountant shall be furnished with a suitable certificate evidencing that registration.

### Section 5072

(a) No persons shall engage in the practice of accountancy as a partnership unless the partnership is registered by the board.

(b) A partnership, other than a limited partnership, may be registered by the board to engage in the practice of public accountancy provided it meets the following requirements:

(1) At least one general partner shall hold a valid permit to practice as a certified public accountant, public accountant, or accountancy corporation, or shall be an applicant for a certificate as a certified public accountant under Sections 5087 and 5088, or the partnership shall be registered pursuant to subdivision (c) of Section 5096.12.

(2) Each partner engaged within this state in the practice of public accountancy as defined by Section 5051 shall hold a valid permit to practice in this state or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088, except for a partner with practice privileges pursuant to Section 5096.

(3) Each partner not engaged in the practice of public accountancy within this state shall be a certified public accountant in good standing of some state, except as permitted by Section 5079.

(4) Each resident manager in charge of an office of the firm in this state shall be a licensee in good standing of this state, or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

(c) This section shall become operative on July 1, 2013.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096**

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last 10 years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) An individual who qualifies for the practice privilege under this section may engage in the practice of public accountancy in this state, and no notice, fee, or other requirement shall be imposed on that individual by the board.

(d) An individual who qualifies for the practice privilege under this section may perform the following services only through a firm of certified public accountants that has obtained a registration from the board pursuant to Section 5096.12:

(1) An audit or review of a financial statement for an entity headquartered in California.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence for an entity headquartered in California.

(3) An examination of prospective financial information for an entity headquartered in California.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public

accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when the individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall cease exercising the practice privilege in this state if the regulatory agency in the state in which the individual's certificate, license, or permit was issued takes disciplinary action resulting in the suspension or revocation, including stayed suspension, stayed revocation, or probation of the individual's certificate, license, or permit, or takes other disciplinary action against the individual's certificate, license, or permit that arises from any of the following:

(A) Gross negligence, recklessness, or intentional wrongdoing relating to the practice of public accountancy.

(B) Fraud or misappropriation of funds.

(C) Preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports, or information.

(7) Shall cease exercising the practice privilege in this state if convicted in any jurisdiction of any crime involving dishonesty, including, but not limited to, embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(8) Shall cease exercising the practice privilege if the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board bars the individual from practicing before them.

(9) Shall cease exercising the practice privilege if any governmental body or agency suspends the right of the individual to practice before the body or agency.

(f) An individual who is required to cease practice pursuant to paragraphs (6) to (9), inclusive, of subdivision (e) shall notify the board within 15 calendar days, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until he or she has received from the board written permission to do so.

(g) An individual who fails to cease practice as required by subdivision (e) or that fails to provide the notice required by subdivision (f) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of

subdivision (e) or (f) shall, for a minimum of one year from the date the board learns there has been a violation of subdivision (e) or (f), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years.

(h) The board shall require an individual who provides notice to the board pursuant to subdivision (f) to cease the practice of public accountancy in this state until the board provides the individual with written permission to resume the practice of public accountancy in this state.

(i) (1) An individual to whom, within the last seven years immediately preceding the date on which he or she wishes to practice in this state, any of the following criteria apply, shall notify the board, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until the board provides the individual with written permission to do so:

(A) He or she has been the subject of any final disciplinary action by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction.

(B) He or she has had his or her license in another jurisdiction reinstated after a suspension or revocation of the license.

(C) He or she has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error.

(D) He or she has been convicted of a crime or is subject to pending criminal charges in any jurisdiction other than a minor traffic violation.

(E) He or she has otherwise acquired a disqualifying condition as described in subdivision (a) of Section 5096.2.

(2) An individual who fails to cease practice as required by subdivision (e) or who fails to provide the notice required by paragraph (1) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of subdivision (e) or paragraph (1) shall, for a minimum of one year from the date the board knows there has been a violation of subdivision (e) or paragraph (1), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual shall be prohibited from practicing in this state in the same manner as if a licensee has his or her practice privilege revoked and there shall be no possibility of reinstatement for a minimum of two years.

(j) This section shall become operative on July 1, 2013.

(k) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.1**

(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who does not qualify to practice pursuant to the practice privilege described in Section 5096 and who has a license, certificate, or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may revoke a practice privilege from any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

(c) This section shall become operative on July 1, 2013.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.2**

(a) (1) Practice privileges may be revoked for any of the following reasons:

(A) If an individual no longer qualifies under, or complies with, the provisions of this article, including, but not limited to, Section 5096, or implementing regulations.

(B) If an individual commits any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480.

(C) If an individual commits any act that if committed by a licensee would be grounds for discipline under Section 5100.

(D) If an individual commits any act outside of this state that would be a violation if committed within this state.

(E) If an individual acquires at any time, while exercising the practice privilege, any disqualifying condition under paragraph (2).

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender, or other discipline or sanctions involving any license, permit, registration, certificate, or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(D) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(b) The board may revoke practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is revoked.

(B) The reasons for revocation.

(C) The earliest date on which the individual may qualify for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) An individual whose practice privilege has been revoked may only subsequently exercise the practice privilege upon application to the board for reinstatement of the practice privilege not less than one year after the effective date of the notice or decision revoking the practice privilege, unless a longer time period is specified in the notice or decision revoking the practice privilege.

(d) Holders of practice privileges are subject to suspension, fines, or other disciplinary actions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations adopted thereunder.

(e) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege. (f) The provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board, shall apply under this article.

(g) If the board revokes or otherwise limits an individual's practice privilege, the board shall promptly notify the regulatory agency of the state or states in which the individual is licensed, and the United States Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the National Association of State Boards of Accountancy.

(h) This section shall become operative on July 1, 2013.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.4**

(a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its

executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the revocation of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state.

(g) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for revocation or discipline of a practice privilege.

(h) This section shall become operative on July 1, 2013.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.5**

(a) Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095.

(b) This section shall become operative on July 1, 2013.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.6**

(a) In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in

this article and to act on behalf of the board, including, but not limited to, issuing an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

(b) This section shall become operative on July 1, 2013.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.7**

(a) Anywhere the term “license,” “licensee,” “permit,” or “certificate” is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Anywhere the term “employee” is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

(c) For purposes of this article, the term “license” includes certificate or permit.

(d) This section shall become operative on July 1, 2013.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.9**

(a) The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

(b) The board shall adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures to initially implement this article as it goes into effect on July 1, 2013. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State in accordance with the Administrative Procedure Act.

**Section 5096.12**

(a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or any act

that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) A firm that provides the services described in subdivision (d) of Section 5096 shall obtain a registration from the board.

(d) This section shall become operative on July 1, 2013.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.20**

(a) To ensure that Californians are protected from out-of-state licensees with disqualifying conditions who may unlawfully attempt to practice in this state under a practice privilege, prior to July 1, 2013, the board shall add an out-of-state licensee feature to its license lookup tab of the home page of its Internet Web site that allows consumers to obtain information about an individual whose principal place of business is not in this state and who seeks to exercise a practice privilege in this state, that is at least equal to the information that was available to consumers through its home page prior to January 1, 2013, through the practice privilege form previously filed by out-of-state licensees pursuant to Section 5096, as added by Chapter 921 of the Statutes of 2004, and the regulations adopted thereunder. At minimum, these features shall include all of the following:

(1) The ability of the consumer to search by name and state of licensure.

(2) The disclosure of information in the possession of the board, which the board is otherwise authorized to publicly disclose, about an individual exercising a practice privilege in this state, including, but not limited to, whether the board has taken action of any form against that individual and, if so, what the action was or is.

(3) A disclaimer that the consumer must click through prior to being referred to any other Internet Web site, which in plain language explains that the consumer is being referred to an Internet Web site that is maintained by a regulatory agency or other entity that is not affiliated with the board. This disclaimer shall include a link to relevant sections of this article that set forth disqualifying conditions, including, but not limited to, Section 5096.2.

(4) A statement in plain language that notifies consumers that they are permitted to file complaints against such individuals with the board.

(5) A link to the Internet Web site or sites that the board determines, in its discretion, provides the consumer the most complete and reliable information available about the individual's status as a license holder, permit holder, or certificate holder.

(6) If the board of another state does not maintain an Internet Web site that allows a consumer to obtain information about its licensees including, but not limited to, disciplinary history, and that information is not available through a link to an Internet Web site maintained by another entity, a link to contact information for that board, which contains a disclaimer in plain language that explains that the consumer is being referred to a board that does not permit the consumer to obtain information, including, but not limited to, disciplinary history, about individuals through the Internet Web site, and that the out-of-state board is not affiliated with the board.

(b) The board shall biennially survey the Internet Web sites and disclosure policies of other boards to ensure that its disclaimers are accurate.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.21**

(a) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require, by regulation, out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by former Section 5096, as added by Chapter 921 of the Statutes of 2004, and regulations adopted thereunder.

(b) The board shall, at minimum, consider the following factors in making the determination required by subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet Web site to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(c) Notwithstanding subdivision (a), if (1) the National Association of State Boards of Accountancy (NASBA) adopts enforcement best practices guidelines, (2) the board, upon a majority vote at a regularly scheduled board meeting, issues a finding after a public hearing that those practices meet or exceed the board's own enforcement practices, (3) a state has in place and is operating pursuant to enforcement practices substantially equivalent to the best practices guidelines, and (4) disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the board to link consumers to an Internet Web site to obtain information at least equal to the information that was previously available to consumers through the practice privilege form filed by out-of-state licensees pursuant to former Section 5096, as added by Chapter 921 of the Statutes of 2004, no practice privilege form shall be required to be filed by any licensee of that state as required by subdivision (a), nor shall the board be required to report on that state to the Legislature as required by subdivision (d).

(d) (1) The board shall report to the relevant policy committees of the Legislature, the director, and the public, upon request, preliminary determinations made pursuant to this section no later than July 1, 2015. The board shall, prior to January 1, 2016, and thereafter as it deems appropriate, review its determinations made pursuant to subdivision (b) to ensure that it is in compliance with this section.

(2) This subdivision shall become inoperative on July 1, 2017, pursuant to Section 10231.5 of the Government Code.

(e) On or before July 1, 2014, the board shall convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the provisions of this article are consistent with the board's duty to protect the public consistent with Section 5000.1, and whether the provisions of this article satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. The group, at its first meeting, shall adopt policies and procedures relative to how it will conduct its business, including, but not limited to, policies and procedures addressing periodic reporting of its findings to the board.

(f) On or before January 1, 2018, the board shall prepare a report to be provided to the relevant policy committees of the Legislature, the director, and the public, upon request, that, at minimum, explains in detail all of the following:

(1) How the board has implemented this article and whether implementation is complete.

(2) Whether this article is, in the opinion of the board, more, less, or equivalent in the protection it affords the public than its predecessor article.

(3) Describes how other state boards of accountancy have addressed referrals to those boards from the board, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

CALIFORNIA BOARD OF ACCOUNTANCY

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**CPC Item III.** November 15, 2012
**CBA Item X.A.3.** November 15-16, 2012

# Discussion and Policy Decisions on a Potential Rulemaking Regarding Practice Privilege

**Presented by:** Dominic Franzella, Licensing Chief
**Date:** October 30, 2012

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## Purpose of the Item

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with initial concepts for draft regulatory sections specific to implementing the practice privilege provisions included in Senate Bill (SB) 1405. In certain areas, the CBA will need to provide direction on policy issues so that staff can develop language for the draft regulatory sections.

Based on direction provided and decisions rendered by the CBA, staff will prepare initial draft regulatory language for CBA consideration at the January 2013 meeting.

## Action(s) Needed

The CBA is being asked the following:

1. To provide input on the initial concepts for the draft regulatory sections related
2. To provide direction on certain policy issues so that staff can develop language for the draft regulatory sections

## Background

On September 20, 2012 Governor Brown signed into law SB 1405, which included two changes to the California Accountancy Act. First, the bill established the ability for active duty service members to apply for and receive a military inactive status. Second, the bill significantly modified the CBA's practice privilege provisions, with one of the more important changes being that in most cases out-of-state CPAs who are licensed to practice public accountancy in another jurisdiction can do so in California without having to notify the CBA and without paying a fee.

## Comments

Although SB 1405 provides for a high degree of detail there does exist some provisions that the CBA will need to define via regulation. In order to ensure that the necessary regulations take effect concurrently with the practice privilege provisions included in SB 1405 on July 1, 2013, the CBA will need to undertake emergency rulemaking activities provided for in recently-amended Business and Professions (B&P) Code Section 5096.9. This will require that the CBA provide final regulatory text to the Office of Administrative Law on or before June 20, 2013. For additional information on the

rulemaking activities associated with implementing regulations for the new practice provisions, please refer to **CBA Item X.A.2.**

In reviewing the law and determining the types of regulations that the CBA will and may need to enact to effectively implement the new practice privilege provisions, staff consulted with legal counsel and have determined that a possible six new regulation sections may be needed.

In the sections that follow, staff have provided an overview for each of the possible new regulatory sections. For each section, staff is requesting the CBA to provide input on the proposed concepts for the regulatory sections, provide needed direction on certain policy issues to develop the draft language for each section, or, in some cases, both. For each section, staff have provided information to assist the CBA in its deliberations. Additionaly, for reference purposes, staff have included **Attachment 1**, which are the relevant sections of SB 1405 for the practice privilege provisions.

1. <u>Establishing Substantial Equivalency</u>

B&P Code Section 5096 provides three options for an out-of-state licensee to qualify for a practice privilege:

1. The individual has continually practiced public accountancy under a valid license issued by any state for at least four of the last 10 years.
2. The individual has a license, certificate, or permit from a state which the CBA has determined to have education, examination, and experience qualifications for licensure substantially equivalent to California's qualifications for Pathway 2 (baccalaureate degree, with a minimum of 150 semester hours and one year general accounting experience).
3. The individual possesses education, examination, and experience qualifications for licensure which have been determined by the CBA to be substantially equivalent to California's qualifications under Pathway 2.

For this regulatory section staff will develop language to establish a list of substantially equivalent states and individual substantial equivalency (numbers 2 and 3 above). In developing how best to approach drafting the language, since both qualifications exist in the present version of practice privilege, staff will use the prior policy decisions the CBA made as it relates to the present practice privilege provisions.

*Substantially Equivalent States*

Under the present practice privilege provisions, the CBA made a policy decision to rely on the National Association of State Boards of Accountancy's (NASBA) list of substantially equivalent states. Based on discussion with legal counsel, however, since the same rule/standard is applied as a general application for all affected parties, the CBA must establish the list via regulation. For the new practice privilege provisions, staff intend on drafting regulatory language indicating that the CBA will rely on NASBA's list of substantially equivalent states for purposes of establishing a list of CBA substantially equivalent states.

In establishing its list of substantially equivalent states, NASBA evaluates each state based on its substantial equivalence to the Uniform Accountancy Act (UAA). For NASBA to deem a state substantially equivalent, at the time of licensure, the state must require a baccalaureate degree with a minimum of 150 semester units of education, successful passage of the Uniform CPA Examination, and one year of general accounting experience. Presently, the Virgin Islands is the only state (jurisdiction) excluded from NASBA's list. It appears that most, if not all, states that have adopted mobility rely on NASBA's list of substantially equivalent states.

Staff would like to highlight that by establishing the list via regulation, at any point should the CBA need to add or remove a state, it would require the CBA to undertake a rulemaking. Given that the CBA will only remove a state from this list when it determines that it is necessary to protect public interest, it appears a reasonable argument may be made that the CBA could undertake an emergency rulemaking to remove the state.

*Individual Substantial Equivalency*
Under the present practice privilege provisions, the CBA requires an individual to submit his/her qualifications to NASBA's CredentialNet service for review. After which and prior to beginning practice in California, the individual must provide the NASBA CredentialNet file number as part of the practice privilege notification process.

For purposes of the new practice privilege provisions, staff intend on drafting regulatory language that will continue to use NASBA's CredentialNet for purposes of having individuals establish individual substantial equivalency. Staff plan on making one minor change to the policy originally adopted by the CBA. In keeping with the spirit and intent of no notice, staff plan on requiring an individual to retain the NASBA CredentialNet file number and only provide it to the CBA upon request.

**Action Needed**
Staff is requesting that the CBA determine whether it wishes to adopt staff's plan for relying on the use of NASBA's substantial equivalent states list and NASBA's CredentialNet service for purposes of having individuals establish, when necessary, individual substantial equivalency for development of this section. If, however, the CBA would rather move in an alternate direction, it would require the CBA to develop criteria for its own list of states and criteria for how the CBA will review individuals for individual substantial equivalency.

2. <u>Definitions</u>
Staff believe that a potential exists for three definitions resulting from the new practice privilege provisions: (1) Headquartered in California, (2) Principal Place of Business, and (3) Minor Traffic Violation. Although for this section staff is seeking policy direction from the CBA on whether it wishes to define one or more of the aforementioned terms, by no means is the CBA required to develop any definitions.

*Headquartered in California*
B&P Code Sections 5096(d) and 5096.12(c) require that in certain circumstances an out-of-state accounting firm register with the CBA so that a practice privilege holder may practice through it. Specifically, an out-of-state accounting firm intending to perform the following services for a California-headquartered entity must register with the CBA:

- An audit or review of financial statements
- A compilation of a financial statement when it is expected, or might reasonably expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence
- An examination of prospective financial information

In evaluating the UAA's and other states' requirements for mobility/practice privilege, staff could not locate any definitions for "headquartered." Therefore, in order to provide the CBA with an idea of a possible definition for "headquartered in California," working with legal counsel, the below definition is being provided. The definition relies on two elements: (1) the usual and customary meaning of the word headquartered as defined in the dictionary and (2) the California Department of Education's definition for determining contractors and applicants headquarters for purposes of child development programs.

- *"Headquartered in California" shall mean an entity that has its primary administrative office physically located in California from which the entity's activities are directed, controlled, or coordinated. The primary administrative office is that office which houses the executive officer(s), the fiscal functions, and other centralized support services as documented to the Internal Revenue Service.*

In evaluating the above definition, if the CBA relied solely on the first sentence of the definition (that drawn from the dictionary), it would, in all likelihood, subject more out-of-state accounting firms to registration. By adding the second qualifying sentence (that drawn from the California Department of Education), it would, in all likelihood, subject fewer firms to registration.

**Action Needed**
The CBA must determine if it wishes to define the term "headquartered in California." In deciding the need for a definition, the CBA may wish to consider that without a definition, an out-of-state accounting firm would need to rely on its best judgment in determining if it intends on performing services for a California-headquartered entity that would require registration.

*Principal Place of Business*
The requirement that an individual not maintain a principal place of business in California exists in the present practice privilege requirements. This same requirement is maintained in the new practice privilege provision – specifically, B&P Code Section 5096.

When the initial regulations further defining the existing practice privilege statutes took effect, the CBA did not define the term principal place of business. As part of its present *2010-2012 Strategic Plan*, however, the CBA did include an objective to define the term. The CBA and staff took no actions to define the term since stakeholders were actively seeking to amend the practice privilege provisions to move toward the no notice, no fee, no escape version of practice privilege being adopted nationally.

Staff reviewed both the UAA and other states' requirements for mobility/practice privilege to determine, if and how, the term "principal place of business" was defined. The UAA defines the term principal place of business as "the office location designated by the licensee for purposes of substantial equivalency and reciprocity." As for how other states define the term, staff found the following:

- Eleven states do not define the term (Alabama, Alaska, Delaware, Florida, Idaho, Illinois, Indiana, Nebraska, Nevada, Oregon, Texas)
- Thirteen states have adopted the exact, or substantially similar, text of the UAA (Colorado, Georgia, Kansas, Michigan, Mississippi, New Hampshire, New Jersey, Oregon, South Carolina, Utah, Vermont, West Virginia, Wyoming)
- Four states include slightly more specificity by adding the term "for the practice of public accounting" (Arizona, Arkansas, Connecticut, Iowa)
- Two states provide for a definition that deviates from the UAA (New York, Washington). Specifically, New York's definition states "Principal place of business means the office location designated by the licensee from which, the person directs, controls, and coordinates his or her professional services." Washington's definition states "Principal place of business means a single fixed location designated by the individual from which the individual or licensed firm directs, controls, or coordinates the majority of his or her business activities."

In an effort to provide the CBA with alternatives beyond those used by NASBA (via the UAA) and by the other state boards of accountancy, the below definition is provided. This definition, which legal counsel assisted in preparing, seeks to more closely align the place of business with the practice of public accountancy (similar to the definitions developed by New York and Washington). Additionally, the definition includes elements of the Internal Revenue Service's (IRS) requirements for a establishing a location as a principal place of business for purposes of a tax deduction.

- *"Principal place of business" shall mean the physical location which is the primary location from which the individual performs activities that if performed by a certified public accountant or public accountant, are the practice of public accountancy as defined in Business and Professions Code Section 5051.*
  *(2) For the purposes of this subsection, the following factors shall be considered in determining what is considered a "primary location":*
  *(A) the relative importance of the activities performed at each place where the individual conduct business, and,*
  *(B) the amount of time spent at each place where the individual conduct business.*

> *(3) The location will be considered "primary" if the individual meets the following requirements:*
> *(A) the individual uses the location exclusively and regularly for administrative or management activities of his or her business, and*
> *(B) the individual has no other fixed location where he or she conducts substantial business activities.*

**Action Needed**
The CBA must determine if it wishes to define the term "principal place of business." If it elects to define the term, the CBA could look to guidance from the examples provided above, or the CBA could move forward with an alternate approach of its choosing. If the CBA chooses not to define the term, an out-of-state practitioner would need to use his/her best judgment in determining whether a California location serves as his/her principal place of business.

*Minor Traffic Violation*
Given the fact that the CBA has already established a definition for this term as part of its rulemaking activities associated with the retroactive fingerprinting regulations, staff intend on mirroring the definition for purposes of the practice privilege provision.

Staff intend on using the following definition:

- *"Minor traffic violation" shall mean traffic infractions under $1000 not involving alcohol, dangerous drugs, or controlled substances.*

**Action Needed**
Staff is requesting that the CBA determine whether it wishes to adopt staff's initial plan for including a definition for the term "minor traffic violation" and, if so, does it wish rely on the above-provided definition. If the CBA would rather define the term differently for purposes of the new practice privilege provisions, it will need to provide staff with direction. If, however, the CBA elects not to include a definition, staff will be unable to provide specific guidance on what constitutes a minor traffic violation and would thus be left up to each individual to determine on a case-by-case basis.

3. <u>Practice Privilege Forms for Individuals</u>

Staff intend on developing three forms for individuals for the purposes of the new practice privilege requirements. The first two forms are required by statute, while the third form is intended to collect necessary information from an individual petitioning the CBA for reinstatement of practice rights under a practice privilege.

In order to require that an individual use a particular form, the CBA will need to develop the forms via regulation. Historically, the CBA has taken the approach of exposing the form as part of the rulemaking process and incorporating the form by reference. Below is an overview of the three forms staff plan on developing.

1. Cessation of Notification Form – If an individual has certain events occur after he/she began practice in California under a practice privilege, B&P Code Section 5096(f) requires the individual to cease practice and submit information to the

CBA. The individual is subsequently prohibited from practicing in California until the CBA provides written approval.

2. Pre-Notification Form – Prior to beginning practice in California under a practice privilege, B&P Code Section 5096(i) requires an individual with certain events that occurred within the prior seven years to obtain CBA approval.
3. Reinstatement of Practice Privilege Form – For an individual whose practice rights under a practice privilege were revoked by the CBA, he/she must petition the CBA for reinstatement. To ensure the CBA collects all relevant information, staff will develop a form that will closely mirror the form presently used by the CBA when an individual petitions for reinstatement of his/her revoked CPA license.

**Action Needed**
Although no CBA action is needed on the first two forms, as they are required by statute, the CBA will need to determine whether it concurs with staff's plan to develop a third form for collecting information related to reinstatement of revoked practice privilege rights. If the CBA decides not to establish and require a form, it may receive inconsistent information from petitioner to petitioner for purposes of evaluating petitions for reinstatement of a revoked practice privilege.

4. <u>Out-of State Accounting Firms Registration</u>

As noted previously in the area outlining Definitions, if an out-of-state accounting firm intends on performing certain services for a California-headquartered entity, it must first obtain a registration from the CBA. It appears that many states have adopted this type of requirement for an out-of-state accounting firm to register with the state prior to performing these similar services. What appears to be different is that the states that require this type of registration require the out-of-state accounting firm to undergo full firm licensure.

Although, B&P Code Section 5070, 5096(d), and 5096.12 outline the authority for registration of an out-of-state accounting firm, nowhere do the sections provide information on what the CBA must collect in order to register an out-of-state accounting firm. Given the intent of mobility (quick and relatively seamless practice rights state-to-state) and the manner in which B&P Code Section 5070 was drafted (what appears to be a specific reference for out-of-state accounting firm registration), it appears it was not intended for an out-of-state accounting firm to undergo a full licensure process. This presumption seems to be further underscored by the fact that many out-of-state accounting firms can have a form of legal organization not recognized by the CBA or California (for instance a limited liability company or LLC).

Since staff presume an out-of-state accounting firm will not undergo the full licensure process, for this section staff is seeking policy direction on the following two issues related to out-of-state accounting firm registration:

1. The information the CBA wants to collect for purposes of initial registration.
2. Whether the CBA wants to require an out-of-state accounting firm to renew the registration and, if so, the frequency of the renewal.

Staff do not intend on including a requirement that an out-of-state accounting firm pay a fee for the initial registration; further, if the CBA does decide a renewal of the registration is necessary, staff do not intend on requiring a fee for renewal.

*Initial Registration of an Out-of-State Accounting Firm*
Based on discussion with legal counsel, aside from the most pertinent information for an out-of-state accounting firm (accounting firm name, address of record, contact information, and state of licensure), the CBA must also collect ownership information, which may vary based on the form of legal organization. For example, an LLC may need to provide all ownership information, while a corporation may simply need to provide the majority shareholder. According to legal counsel this is necessary for purposes of enforcement-related matters.

Additionally, based on discussion with legal counsel, for purposes of B&P Code Section 144 (**Attachment 2**) this would be considered an application and thus require that the applicant be fingerprinted. Legal counsel has advised staff that for purposes of registering an out-of-state accounting firm that operates as a sole proprietorship or legally organized as general partnership, it would require all owners to submit fingerprints to the Department of Justice (DOJ). Furthermore, legal counsel has advised staff that it should collect fingerprint information on all designated owners.

As members give consideration to the information it wishes to collect for purposes of out-of-state accounting firm registration, it may want to consider the following:

- The CBA presently collects all ownership information for registering California-licensed accounting firms – corporations or partnerships (general partnerships or limited liability partnerships).
- The CBA does not require that all owners of a California-licensed accounting firm submit to fingerprinting.
- For any individual required to undergo fingerprinting, since the individual will be located out-of-state, the CBA will need to send them fingerprint cards as Live Scan is only available at locations in California.
- The fee charged by the DOJ for fingerprint processing is $49.
- The out-of-state accounting firm will need to remit the processing fee to the CBA for each individual requiring fingerprinting.
- The out-of-state accounting firm would be charged a rolling fee by the agency that completes the fingerprinting.

Since staff do not possess the expertise in the area of requirements associated with firm registration, for this section, staff will defer to legal counsel should the CBA have specific questions related the minimum requirements for initial registration of an out of state accounting firm.

**Action Needed**
The CBA must decide the following related to the initial registration of an out-of-state accounting firm:

1. Does it want to require submission of all ownership information?
2. Does it want to require owners associated with the accounting firm to submit fingerprints?

*Renewal of an Out-of-State Accounting Firm Registration*
After an out-of-state accounting firm has obtained the required registration, the CBA must consider whether to require an out-of-state accounting firm to renew the registration. As the CBA gives consideration to this policy issue, it may wish to consider the following:

- Staff find nothing in the law that appears to expressly require the renewal of the registration.
- The information originally submitted with the registration form by an out-of-state accounting firm may become outdated.
- The CBA requires all license types, including accounting firms, to renew the license every two years.
- The CBA requires sole proprietorships registered under a fictitious name permit (in essence a doing business as) to renew the registration every five years.

**Action Needed**
The CBA must determine if it wishes to have an out-of-state accounting firm renew its registration. If it does decide to have the registration renewed, the CBA must also determine the frequency of the renewal requirement.

5. <u>Appeals</u>

In three instances the CBA can take action to suspend an individual's right to practice under a practice privilege, short of revocation. These types of suspensions can be found in B&P Code Section 5096 – specifically subdivisions (g), (h), and (i). In all three instances, staff presume the Executive Officer will act on the CBA's behalf as presently done when reviewing disqualifying conditions for practice privilege notifications.

If this process is employed, in these three areas, none of the decisions rendered by the Executive Officer would provide an out-of-state licensee an ability to appeal the decision, including under the Administrative Procedure Act. To provide some level of due process, staff intend on including a regulation section providing an appeal process in these limited circumstances. Staff will look to CBA Regulation Section 49 (**Attachment 3**) since it outlines how an individual can appeal matters to the CBA related to a CBA committee or staff decision.

**Action Needed**
The CBA must determine: (1) if it wishes to have the Executive Officer decide matters under subsections (g), (h), and (i) of B&P Code Section 5096 and (2) if so, if it wishes to include an option for an individual the ability to appeal the Executive Officer's decision.

If the CBA does not wish to move forward with staff's plan for having the Executive Officer evaluate possible suspensions under these three provisions, it will require the CBA to take action on the possible suspension at their regularly-scheduled meetings. As a result, individuals may have up to additional six to eight weeks of time added to the review process.

6. Response to Board Inquiry

Staff intend on developing regulatory language similar to present CBA Regulation Section 34 (**Attachment 4**), which is in the current practice privilege regulations. This will include citation and fine authority.

**Action Needed**

The CBA must decide if it concurs with staff's plan of establishing a regulation requiring a response to CBA inquiries and, if so, to develop the language in a similar manner to the existing language found in CBA Regulation Section 34.

**Fiscal/Economic Impact Considerations**

Based on the determinations and policy decisions made the CBA, staff will provide information on the possible fiscal/economic impact at the January 2013 meeting.

**Recommendation**

Staff is requesting the CBA to approve its initial plan for regulatory sections related to the new practice privilege provisions and to direct staff to draft regulatory language based on any relavent policy decisions provided by the CBA.

**Attachments**

1. Senate Bill 1405 – Practice Privilege Provisions Set to Take Effect July 1, 2013
2. B&P Code Section 144
3. CBA Regulation Section 49
4. CBA Regulation Section 34

**Attachment 1**

# SENATE BILL 1405 – PRACTICE PRIVILEGE PROVISIONS SET TO TAKE EFFECT JULY 1, 2013

## BUSINESS AND PROFESSIONS CODE

### Section 5070

Permits to engage in the practice of public accountancy in this state shall be issued by the board only to holders of the certificate of certified public accountant issued under this chapter and to those partnerships, corporations, and other persons who, upon application approved by the board, are registered with the board under this chapter. Notwithstanding any other provision of law, the board may register an entity organized and authorized to practice public accountancy under the laws of another state for the purpose of allowing that entity to satisfy the registration requirement set forth in Section 5096.12, provided that (1) the certified public accountants providing services in California qualify for the practice privilege, and (2) the entity satisfies all other requirements to register in this state, other than its form of legal organization.

All applicants for registration shall furnish satisfactory evidence that the applicant is entitled to registration and shall pay the fee as provided in Article 8 (commencing with Section 5130). Every partnership, corporation, and other person to whom a permit is issued after December 31, 1962, shall, in addition to any other fee which may be payable, pay the initial permit fee provided in Article 8 (commencing with Section 5130). Each partnership, corporation, and other person issued a permit by the board to practice as a certified public accountant or as a public accountant shall be furnished with a suitable certificate evidencing that registration.

### Section 5072

(a) No persons shall engage in the practice of accountancy as a partnership unless the partnership is registered by the board.

(b) A partnership, other than a limited partnership, may be registered by the board to engage in the practice of public accountancy provided it meets the following requirements:

(1) At least one general partner shall hold a valid permit to practice as a certified public accountant, public accountant, or accountancy corporation, or shall be an applicant for a certificate as a certified public accountant under Sections 5087 and 5088, or the partnership shall be registered pursuant to subdivision (c) of Section 5096.12.

(2) Each partner engaged within this state in the practice of public accountancy as defined by Section 5051 shall hold a valid permit to practice in this state or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088, except for a partner with practice privileges pursuant to Section 5096.

(3) Each partner not engaged in the practice of public accountancy within this state shall be a certified public accountant in good standing of some state, except as permitted by Section 5079.

(4) Each resident manager in charge of an office of the firm in this state shall be a licensee in good standing of this state, or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

(c) This section shall become operative on July 1, 2013.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096**

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last 10 years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) An individual who qualifies for the practice privilege under this section may engage in the practice of public accountancy in this state, and no notice, fee, or other requirement shall be imposed on that individual by the board.

(d) An individual who qualifies for the practice privilege under this section may perform the following services only through a firm of certified public accountants that has obtained a registration from the board pursuant to Section 5096.12:

(1) An audit or review of a financial statement for an entity headquartered in California.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence for an entity headquartered in California.

(3) An examination of prospective financial information for an entity headquartered in California.

(e) An individual who holds a practice privilege under this article:

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public

accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when the individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand, or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall cease exercising the practice privilege in this state if the regulatory agency in the state in which the individual's certificate, license, or permit was issued takes disciplinary action resulting in the suspension or revocation, including stayed suspension, stayed revocation, or probation of the individual's certificate, license, or permit, or takes other disciplinary action against the individual's certificate, license, or permit that arises from any of the following:

(A) Gross negligence, recklessness, or intentional wrongdoing relating to the practice of public accountancy.

(B) Fraud or misappropriation of funds.

(C) Preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports, or information.

(7) Shall cease exercising the practice privilege in this state if convicted in any jurisdiction of any crime involving dishonesty, including, but not limited to, embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(8) Shall cease exercising the practice privilege if the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board bars the individual from practicing before them.

(9) Shall cease exercising the practice privilege if any governmental body or agency suspends the right of the individual to practice before the body or agency.

(f) An individual who is required to cease practice pursuant to paragraphs (6) to (9), inclusive, of subdivision (e) shall notify the board within 15 calendar days, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until he or she has received from the board written permission to do so.

(g) An individual who fails to cease practice as required by subdivision (e) or that fails to provide the notice required by subdivision (f) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of

subdivision (e) or (f) shall, for a minimum of one year from the date the board learns there has been a violation of subdivision (e) or (f), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years.

(h) The board shall require an individual who provides notice to the board pursuant to subdivision (f) to cease the practice of public accountancy in this state until the board provides the individual with written permission to resume the practice of public accountancy in this state.

(i) (1) An individual to whom, within the last seven years immediately preceding the date on which he or she wishes to practice in this state, any of the following criteria apply, shall notify the board, on a form prescribed by the board, and shall not practice public accountancy in this state pursuant to this section until the board provides the individual with written permission to do so:

(A) He or she has been the subject of any final disciplinary action by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction.

(B) He or she has had his or her license in another jurisdiction reinstated after a suspension or revocation of the license.

(C) He or she has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error.

(D) He or she has been convicted of a crime or is subject to pending criminal charges in any jurisdiction other than a minor traffic violation.

(E) He or she has otherwise acquired a disqualifying condition as described in subdivision (a) of Section 5096.2.

(2) An individual who fails to cease practice as required by subdivision (e) or who fails to provide the notice required by paragraph (1) shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the board as if the practice privilege were a license and the individual were a licensee. An individual in violation of subdivision (e) or paragraph (1) shall, for a minimum of one year from the date the board knows there has been a violation of subdivision (e) or paragraph (1), not practice in this state and shall not have the possibility of reinstatement during that period. If the board determines that the failure to cease practice or provide the notice was intentional, that individual shall be prohibited from practicing in this state in the same manner as if a licensee has his or her practice privilege revoked and there shall be no possibility of reinstatement for a minimum of two years.

(j) This section shall become operative on July 1, 2013.

(k) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.1**

(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who does not qualify to practice pursuant to the practice privilege described in Section 5096 and who has a license, certificate, or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may revoke a practice privilege from any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

(c) This section shall become operative on July 1, 2013.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.2**

(a) (1) Practice privileges may be revoked for any of the following reasons:

(A) If an individual no longer qualifies under, or complies with, the provisions of this article, including, but not limited to, Section 5096, or implementing regulations.

(B) If an individual commits any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480.

(C) If an individual commits any act that if committed by a licensee would be grounds for discipline under Section 5100.

(D) If an individual commits any act outside of this state that would be a violation if committed within this state.

(E) If an individual acquires at any time, while exercising the practice privilege, any disqualifying condition under paragraph (2).

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender, or other discipline or sanctions involving any license, permit, registration, certificate, or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(D) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(b) The board may revoke practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is revoked.

(B) The reasons for revocation.

(C) The earliest date on which the individual may qualify for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) An individual whose practice privilege has been revoked may only subsequently exercise the practice privilege upon application to the board for reinstatement of the practice privilege not less than one year after the effective date of the notice or decision revoking the practice privilege, unless a longer time period is specified in the notice or decision revoking the practice privilege.

(d) Holders of practice privileges are subject to suspension, fines, or other disciplinary actions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations adopted thereunder.

(e) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege. (f) The provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board, shall apply under this article.

(g) If the board revokes or otherwise limits an individual's practice privilege, the board shall promptly notify the regulatory agency of the state or states in which the individual is licensed, and the United States Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the National Association of State Boards of Accountancy.

(h) This section shall become operative on July 1, 2013.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.4**

(a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its

executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

(1) The reason for the suspension.

(2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.

(3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the revocation of practice privileges.

(d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.

(e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer.

(f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state.

(g) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for revocation or discipline of a practice privilege.

(h) This section shall become operative on July 1, 2013.

(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.5**

(a) Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095.

(b) This section shall become operative on July 1, 2013.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.6**

(a) In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in

this article and to act on behalf of the board, including, but not limited to, issuing an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

(b) This section shall become operative on July 1, 2013.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.7**

(a) Anywhere the term “license,” “licensee,” “permit,” or “certificate” is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Anywhere the term “employee” is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

(c) For purposes of this article, the term “license” includes certificate or permit.

(d) This section shall become operative on July 1, 2013.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.9**

(a) The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

(b) The board shall adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures to initially implement this article as it goes into effect on July 1, 2013. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State in accordance with the Administrative Procedure Act.

**Section 5096.12**

(a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or any act

that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) A firm that provides the services described in subdivision (d) of Section 5096 shall obtain a registration from the board.

(d) This section shall become operative on July 1, 2013.

(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.20**

(a) To ensure that Californians are protected from out-of-state licensees with disqualifying conditions who may unlawfully attempt to practice in this state under a practice privilege, prior to July 1, 2013, the board shall add an out-of-state licensee feature to its license lookup tab of the home page of its Internet Web site that allows consumers to obtain information about an individual whose principal place of business is not in this state and who seeks to exercise a practice privilege in this state, that is at least equal to the information that was available to consumers through its home page prior to January 1, 2013, through the practice privilege form previously filed by out-of-state licensees pursuant to Section 5096, as added by Chapter 921 of the Statutes of 2004, and the regulations adopted thereunder. At minimum, these features shall include all of the following:

(1) The ability of the consumer to search by name and state of licensure.

(2) The disclosure of information in the possession of the board, which the board is otherwise authorized to publicly disclose, about an individual exercising a practice privilege in this state, including, but not limited to, whether the board has taken action of any form against that individual and, if so, what the action was or is.

(3) A disclaimer that the consumer must click through prior to being referred to any other Internet Web site, which in plain language explains that the consumer is being referred to an Internet Web site that is maintained by a regulatory agency or other entity that is not affiliated with the board. This disclaimer shall include a link to relevant sections of this article that set forth disqualifying conditions, including, but not limited to, Section 5096.2.

(4) A statement in plain language that notifies consumers that they are permitted to file complaints against such individuals with the board.

(5) A link to the Internet Web site or sites that the board determines, in its discretion, provides the consumer the most complete and reliable information available about the individual's status as a license holder, permit holder, or certificate holder.

(6) If the board of another state does not maintain an Internet Web site that allows a consumer to obtain information about its licensees including, but not limited to, disciplinary history, and that information is not available through a link to an Internet Web site maintained by another entity, a link to contact information for that board, which contains a disclaimer in plain language that explains that the consumer is being referred to a board that does not permit the consumer to obtain information, including, but not limited to, disciplinary history, about individuals through the Internet Web site, and that the out-of-state board is not affiliated with the board.

(b) The board shall biennially survey the Internet Web sites and disclosure policies of other boards to ensure that its disclaimers are accurate.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Section 5096.21**

(a) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require, by regulation, out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by former Section 5096, as added by Chapter 921 of the Statutes of 2004, and regulations adopted thereunder.

(b) The board shall, at minimum, consider the following factors in making the determination required by subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet Web site to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(c) Notwithstanding subdivision (a), if (1) the National Association of State Boards of Accountancy (NASBA) adopts enforcement best practices guidelines, (2) the board, upon a majority vote at a regularly scheduled board meeting, issues a finding after a public hearing that those practices meet or exceed the board's own enforcement practices, (3) a state has in place and is operating pursuant to enforcement practices substantially equivalent to the best practices guidelines, and (4) disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the board to link consumers to an Internet Web site to obtain information at least equal to the information that was previously available to consumers through the practice privilege form filed by out-of-state licensees pursuant to former Section 5096, as added by Chapter 921 of the Statutes of 2004, no practice privilege form shall be required to be filed by any licensee of that state as required by subdivision (a), nor shall the board be required to report on that state to the Legislature as required by subdivision (d).

(d) (1) The board shall report to the relevant policy committees of the Legislature, the director, and the public, upon request, preliminary determinations made pursuant to this section no later than July 1, 2015. The board shall, prior to January 1, 2016, and thereafter as it deems appropriate, review its determinations made pursuant to subdivision (b) to ensure that it is in compliance with this section.

(2) This subdivision shall become inoperative on July 1, 2017, pursuant to Section 10231.5 of the Government Code.

(e) On or before July 1, 2014, the board shall convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the provisions of this article are consistent with the board's duty to protect the public consistent with Section 5000.1, and whether the provisions of this article satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. The group, at its first meeting, shall adopt policies and procedures relative to how it will conduct its business, including, but not limited to, policies and procedures addressing periodic reporting of its findings to the board.

(f) On or before January 1, 2018, the board shall prepare a report to be provided to the relevant policy committees of the Legislature, the director, and the public, upon request, that, at minimum, explains in detail all of the following:

(1) How the board has implemented this article and whether implementation is complete.

(2) Whether this article is, in the opinion of the board, more, less, or equivalent in the protection it affords the public than its predecessor article.

(3) Describes how other state boards of accountancy have addressed referrals to those boards from the board, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

**Attachment 2**

# BUSINESS AND PROFESSIONS CODE
# SECTION 144

(a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

(1) California Board of Accountancy.
(2) State Athletic Commission.
(3) Board of Behavioral Sciences.
(4) Court Reporters Board of California.
(5) State Board of Guide Dogs for the Blind.
(6) California State Board of Pharmacy.
(7) Board of Registered Nursing.
(8) Veterinary Medical Board.
(9) Board of Vocational Nursing and Psychiatric Technicians.
(10) Respiratory Care Board of California.
(11) Physical Therapy Board of California.
(12) Physician Assistant Committee of the Medical Board of California.
(13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
(14) Medical Board of California.
(15) State Board of Optometry.
(16) Acupuncture Board.
(17) Cemetery and Funeral Bureau.
(18) Bureau of Security and Investigative Services.
(19) Division of Investigation.
(20) Board of Psychology.
(21) California Board of Occupational Therapy.
(22) Structural Pest Control Board.
(23) Contractors' State License Board.
(24) Naturopathic Medicine Committee.
(25) Professional Fiduciaries Bureau.
(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

**Attachment 3**

## CALIFORNIA BOARD OF ACCOUNTANCY REGULATION
## SECTION 49

(a) Any applicant who is aggrieved by any action of any of the board's committees or its staff may appeal from such action to the board. The appeal shall be filed within 24 months of the action being appealed or the mailing of the written notification from the board, whichever is later. Two signed copies of the appeal shall be mailed or delivered to the office of the California Board of Accountancy. The appeal shall contain the following information:

(1) The name, business address and residence address of the applicant making the appeal.

(2) The action being appealed from and the date of any written notification from the board.

(3) Any summary of the basis for the appeal, including any information which the applicant believes was not given adequate consideration by the committee or staff.

(b) The board will consider only appeals based on information previously considered by its committees or staff. If the applicant wishes to submit for consideration additional evidence or information not previously submitted to the board's committee or staff, such additional information should be submitted directly to the committee or staff within the request that its previous action be reconsidered. An appeal based on evidence or information not previously submitted to the committee or staff will be referred by the board to the appropriate committee or staff for further consideration.

**Attachment 4**

## CALIFORNIA BOARD OF ACCOUNTANCY REGULATION
## SECTION 34

(a) In addition to any other applicable sanction, failure to comply with the obligation to respond to Board inquiry pursuant to Section 5096(e)(5) could result in one or more of the following:

(1) Issuance of a fine of $250 to $5,000;

(2) An administrative suspension of current practice privilege pursuant to Business and Professions Code Section 5096.4; or

(3) The requirement to obtain approval of the Board before commencing to practice under a future practice privilege.

(b) In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

CALIFORNIA BOARD OF ACCOUNTANCY

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| **CPC Item IV.** | **CBA Item X.A.4.** |
|---|---|
| November 15, 2012 | November 15-16, 2012 |

# Implementation of Section 27 of the Business and Professions Code and Consideration of Legislative Proposal Providing for Limitations on Timeframes for Posting

**Presented by:** Rafael Ixta, Enforcement Division Chief
**Date:** October 10, 2012

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## Purpose of the Item

The purpose of this agenda item is to present the California Board of Accountancy (CBA) with information regarding the implementation of section 27 of the Business and Professions (B&P) Code and provide an opportunity to discuss whether certain exceptions to that section should be proposed.

## Action(s) Needed

The CBA will be asked to determine whether it wishes to pursue any legislative changes to provide exceptions to B&P Code section 27.

## Background

On January 1, 2012, amendments to B&P Code section 27 (**Attachment 1**) took effect as a result of the passage of Senate Bill 706 of 2011 on which the CBA had taken a Neutral position. These amendments added the CBA to a list of boards and bureaus that are required to post enforcement actions on their websites. It also included accusations as a specified enforcement action that must be posted.

As previously indicated in the May 2012 and September 2012 Executive Officer Monthly Reports to CBA Memebers, “other enforcement actions,” as used in subsection (a) of section 27, has been interpreted to mean that citation and fine information must now be placed on the CBA website.

To be in compliance with the law, CBA staff is taking the following steps to implement the requirement:

- revise information provided on the website and letters issued to licensees who may be subject to a citation and fine to notify them that the information will be posted to the CBA website;
- develop a means for posting the information to the website in a format similar to what is presently available for accusations;
- begin posting the required information; and,
- as resources become available, work on posting citation and fine information retroactively back to January 1, 2012, when the law became effective for the CBA.

In addition, there is no provision allowing removal of enforcement actions from the website. While the CBA previously had a policy of posting certain enforcement actions on its website, it also had a practice of removing most of those actions from the website after seven years with the exception of revocations, license surrenders, and permanent restrictions on a license which remained indefinitely.

## Comments

Section 27 is designed to provide consumers with easier access to enforcement information to allow them to make informed choices regarding any Department of Consumer Affairs licensees they may wish to hire. While enforcement actions are always public information, section 27 provides consumers with greater ease of access to that information.

However, since the majority of the CBA's citations are administrative in nature, such as failure to respond to a CBA inquiry or failure to provide documentation of continuing education, the CBA may wish to consider sponsoring legislation to provide for a time limit for certain citations to be posted on the Internet.

The Board of Behavioral Sciences (BBS), which has been subject to section 27 for some time, has a section of law in its practice act which authorizes the removal of citation and fine information from its website after five years provided the fine was $1,500 or less.

Staff has provided proposed legislative language (**Attachment 2**) for the consideration of the CBA which is identical to the BBS language. If the CBA approves this language, it could either send this language to the Legislative Committee for vetting at the January 2013 CBA meeting, or it could direct staff to begin the process to have the language drafted by Legislative Counsel and begin looking for the best method for pursuing it as legislation.

## Fiscal/Economic Impact Considerations

There may be minor costs associated with tracking these citations and removing them from the website at the appropriate time.

## Recommendation

If the CBA supports removing citations from the website after a period of time, staff recommend that the CBA approve the language and direct staff to pursue it as legislation in the 2013 legislative year.

## Attachment

1 – B&P Code Section 27
2 – Proposed Legislative Language

CALIFORNIA BOARD OF ACCOUNTANCY

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**Attachment 1**

# Business and Professions Code Section 27

**§ 27.**
(a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.
(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.
(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:
(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.
(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.
(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.
(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory

managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.
(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.
(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.
(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.
(8) The California Board of Accountancy shall disclose information on its licensees and registrants.
(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.
(10) The State Athletic Commission shall disclose information on its licensees and registrants.
(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.
(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.
(13) The Acupuncture Board shall disclose information on its licensees.
(14) The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, licensed educational psychologists, and licensed professional clinical counselors.
(15) The Dental Board of California shall disclose information on its licensees.
(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.
(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.
(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.
(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.
(f) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

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**Attachment 2**

# Proposed Legislative Language

**§5117.**
The board shall not publish on the Internet the final determination of a citation and fine of one thousand five hundred dollars ($1,500) or less issued against a licensee pursuant to Section 125.9 for a period of time in excess of five years from the date of issuance of the citation.

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**CPC Item V.**
November 15, 2012

**CBA Item X.A.5.**
November 15-16, 2012

# Consideration of Options to Allow Individuals to Continue to Apply for and Obtain CPA Licensure Under Pathway 1 and Pathway 2 After the New Educational Requirements in Business and Professions Code Section 5093 Take Effect on January 1, 2014

**Presented by:** Dominic Franzella, Licensing Chief
**Date:** October 30, 2012

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## Purpose of the Item
The purpose of this agenda item is to continue discussions regarding possible action to extend the deadline for CPA licensure applications under the present pathways.

## Action(s) Needed
If the California Board of Accountancy (CBA) determines that it wants to extend the deadline for licensure applications under the present pathways, the CBA will need to direct staff to develop draft legislative language for review at the January 2013 CBA meeting.

## Background
At the September 2012 Committee on Professional Conduct (CPC) meeting, members discussed policy related to potentially extending the licensing application deadline for individuals to continue to apply under the present pathways after January 1, 2014. During deliberations at the CPC meeting members were presented with the scenario of an individual who had already graduated from college intending to become licensed under Pathway 1, but who, based on his start date with the accounting firm, would ultimately fall two weeks short of the full two-year experience requirement.

Members directed staff to explore what options are available to address instances where applicants will fall short of meeting the present pathway requirements because of a lack of experience. Additionally, members directed staff to research how other states managed the transition to a singular pathway to licensure.

## Comments
Presently, the experience requirement for Pathway 1 is two years of general accounting experience, while the experience requirement for Pathway 2 is one year of general accounting experience. In determining whether an applicant meets the respective experience requirement, staff calculates the requirement based on a calendar year. Therefore, if an applicant intends on applying for licensure under the present pathways prior to the sunset date of January 1, 2014, the following applies:

- To meet the experience requirement under Pathway 1, an applicant must have begun obtaining his/her experience on or before January 1, 2012.
- To meet the experience requirement under Pathway 2, an applicant will need to start obtaining his/her experience on or before January 1, 2013.

Over the past decade several states have transitioned to the 150 hour educational standard as outlined in the Uniform Accountancy Act. In these instances, each state handled the transition in its own way. Staff reviewed the rules and regulations of several states that have either recently or will soon be transitioning to a singular pathway for licensure. For the states that staff reviewed, all maintain a substantially equivalent designation from National Association of State Boards of Accountancy (NASBA). Specifically, staff reviewed the following nine states: Delaware, Colorado, New Hampshire, Ohio, Oregon, Pennsylvania, Vermont, Wisconsin, and Wyoming.

In the cases of Delaware, which transitioned this year to the singular pathway of licensure, as well as New Hampshire, Vermont, and Colorado, which are slated to make the transition to a singular pathway within the next two to three years, none are presently offering extensions or exceptions. Outlined below, however, are five states that did provide some type of extension or exception.

- Ohio — Applicants who sat for (but not necessarily passed) the CPA Exam prior to January 1, 2000 are not required to meet the 150 hour requirement.
- Oregon — Applicants who passed one section of the CPA Exam prior to January 1, 2000 or who sat for (but not necessarily passed) at least two sections of the CPA Exam each year since January 1, 2000 are not required to meet the 150 hour requirement.
- Pennsylvania — Applicants who passed at least one part of the CPA Exam prior to December 31, 2011 are not required to meet the 150 hour requirement.
- Wisconsin — Applicants who graduated prior to January 1, 2001 are not required to meet the 150 hour requirement.
- Wyoming — Applicants who passed the CPA Exam prior to January 1, 2012 are not required to meet the 150 hour requirement.

As reported on at the September meeting, staff reached out to the NASBA to gauge what impact extending the deadline to apply for licensure under the present pathways may have on California's substantially equivalent designation. Although NASBA may not be able to provide a definitive answer on what impact extending the deadline may have without a specific proposal, looking to how NASBA has addressed similar situations in other states may provide a good indicator of NASBA's position related to states that continued to license under previous requirements while transiting to a singular pathway. If the CBA decided on some type of continuation, staff will reach out

to NASBA to determine what impact, if any, it may have on California's substantially equivalent designation.

Per members' request, below are two staff-developed options available to address instances where applicants will fall short of meeting the present pathway requirements because of a lack of experience (Options 1 and 2). Additionally, as a result of the research members' requested related to how other states handled the transition to a singular pathway for licensure, staff has also provided an option (Option 3) for possibly extending the deadline to apply for licensure that goes beyond just making exceptions because of a lack of experience.

Option 1 – Establishing a Grace Period Related to Completing Experience Requirement

The CBA could seek to mitigate the effects for those that may fall short only a couple of weeks or a month by establishing a 30- to 60-day grace period to complete any remaining few weeks of experience required to apply under the present pathways. This would provide applicants who truly "just missed" the experience requirement by a few weeks with a concise period of time to obtain the necessary experience, such as the individual discussed at the September CPC meeting. That said, as members consider this option, regardless of how long of a grace period the CBA sought to provide, there will always be applicants who fall short of the experience requirement by a few days or weeks when the grace period ends.

Option 2 – Redefining the Experience Requirement on a Limited Basis

Another option the CBA could consider for a select group, specifically those applying for licensure under the present pathways, is modifying the experience calculation for a specified period of time. As noted earlier, staff presently calculate fulltime experience strictly by the number of calendar months worked. So for example, if an individual began work on January 1, 2012, in order to satisfy the two-year general experience requirement in Pathway 1, he/she would need to have worked fulltime until December 31, 2013. This calculation does not take into account the amount of hours, including overtime hours, the individual worked.

Under this option, rather than just relying solely on a calendar-based approach to calculating experience, the CBA could combine a calendar-based approach with defining the actual minimum number of hours worked. Using 170 hours as the base for a fulltime work month (which staff use when calculating part-time experience), 2,040 hours is the equivalent to one year of experience. Therefore, the CBA could define one year of general accounting experience as a minimum of 2,040 hours and at least six to nine months of physical employment, while for the two-year general accounting experience requirement the CBA could define it as 4,080 hours and 12-18 months. Under Option 2, the select group would only pertain to those applying for license under the present pathways and would not

be something that would extend under the new licensure requirements taking effect January 1, 2014.

Members may wish to consider the following when evaluating this option: (1) this would allow applicants to take advantage of the overtime hours that are presently not taken into consideration; (2) it would continue to allow for the present pathways to sunset as planned on January 1, 2014; (3) by not requiring a full calendar year of experience, applicants may lose the breadth of experience that the present process provides; and (4) staff were unable to identify any states that use a method for calculating experience such as the one being offered in this option.

Option 3 – Extending the Option to Apply Under the Present Pathways Based on When an Individual Passed the Uniform CPA Exam (CPA Exam)
A third option the CBA may wish to consider is to extend the pathways for applicants who pass some number of sections of the CPA Exam. This would be similar to the method used to phase out Pathway 0 as the CBA moved to the present pathways, as well as the approach employed by other states during their transition periods.

In considering this option, staff would recommend that the CBA require that an individual has passed all four parts of the CPA Exam on or before December 31, 2013, while only providing the ability to continue to apply under this option for a two-year period. Staff believe this would help to ensure that students intending to apply under Pathway 1 – the two-year experience requirement – are reasonably afforded sufficient time to obtain the necessary experience. The reason staff recommend that this extension be limited to applicants who have fully passed the CPA Exam is that the CBA can be certain these applicants are on the verge of licensure, whereas an applicant who has only passed a portion of the CPA Exam may still be years away from licensing.

Given the timing elements related to effectively implementing any of these options, even if the CBA could accomplish one or all of these policies via regulation, staff believes that sponsoring legislation is a more prudent approach. Therefore, if the CBA decides to select one of the aforementioned options, staff will provide legislative language at the January 2013 meeting for members' consideration. Additionally, staff will reach back out to NASBA to provide the specific scenario the CBA intends on employing and to get further guidance on what impact, if any, that it may have on California's substantially equivalent designation.

**Fiscal/Economic Impact Considerations**
None.

**Recommendation**
None.

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**LC Item II.** November 15, 2012
**CBA Item X.B.2 .** November 15-16, 2012

# Consideration of Sponsoring Legislation to Amend Business and Professions Code Section 5093 to Allow in Limited Circumstances the Ability for Candidates to Qualify for the Uniform CPA Examination Prior to the Conferral of a Baccalaureate Degree

**Presented by:** Matthew Stanley, Regulation Analyst
**Date:** October 16, 2012

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## Purpose of the Item

The purpose of this agenda item is to present the California Board of Accountancy (CBA) with legislative language to allow candidates to qualify for the Uniform Certified Public Accountant Examination (CPA Exam) prior to the conferral of a baccalaureate degree.

## Action(s) Needed

The CBA will be asked to decide whether to sponsor the proposed language as legislation in the 2013 legislative year.

## Background

In September of 2012, the CBA adopted a policy to allow a candidate for the CPA Exam, in limited circumstances, to qualify to test prior to the conferral of a baccalaureate degree. Those limited circumstances were as follows:

- The applicant must have his/her respective college or university submit a letter along with the transcript attesting to the fact that the individual completed all the requirements for a baccalaureate degree;
- The letter must include the date the individual met all of the bacclaureate degree requirements; and,
- The letter must include a statement indicating that the sole reason the baccalaureate degree has not been conferred is because the individual is enrolled in a five-year master's program.

## Comments

Because the current requirement in Business and Professions Code Section 5093 states that a candidate for the CPA Exam must present evidence that a baccalaureate degree has been completed and conferred, a change in the law is necessary to implement the CBA's adopted policy. Staff have prepared legislative language (**Attachment 1**) that would codify the policy adopted by the CBA at its September 2012 meeting. The proposal also makes some technical and clarifying changes to the existing language.

If the CBA approves of the proposed language, staff will begin the process to have the language drafted by Legislative Counsel. Prior to seeking an author to carry the proposed legislation, staff will request that the language be included in the 2013 omnibus bill. If that request is denied, staff will then seek an author to carry the legislation for the CBA.

## Fiscal/Economic Impact Considerations

There should be no fiscal impact beyond notifying staff of the new method for accepting CPA Exam candidates which could be accomplished through an email, and conducting outreach to candidates to let them know of the new method of qualifying for the CPA Exam.

## Recommendation

Staff recommend that the CBA approve the proposed language and direct staff to pursue it in the 2013 legislative year.

## Attachment

Proposed Legislative Language

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**Attachment 1**

## Proposed Legislative Language

**5093. Conditions to qualify for license under this section**

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the ~~education,~~ examination, education, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(2) (A) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.), or meeting, at a minimum, the standards described in subdivision (c) of Section 5094.

(B) An applicant enrolled in a program at an institution as described in subparagraph (A) that grants concurrent conferral of a master's and baccalaureate degrees may satisfy subparagraph (A) by having a letter from such an institution signed by the Office Registrar or its equivalent, mailed directly to the board along with the applicant's transcripts or an evaluation of transcripts pursuant to Section 5094(c). The letter shall include all of the following:
(i) A statement that the applicant is enrolled and in good standing in a program that will result in the concurrent conferral of a master's and baccalaureate degrees,
(ii) A statement that the applicant has completed all requirements, including general education and elective requirements, for a baccalaureate degree and the only reason the college or university has yet to confer the degree is because the applicant is enrolled in a program that confers a master's and baccalaureate degree concurrently, and
(iii) The date on which the applicant met all of the college or university's requirements for conferral of a baccalaureate degree.

(3) The total educational program shall include a minimum of 24 semester units in accounting subjects and 24 semester units in business-related subjects. This evidence shall be provided at the time of application for admission to the examination, except that

an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

~~(2)~~ (c) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects, 24 semester units in business-related subjects, and, after December 31, 2013, shall also include a minimum of 10 units of ethics study consistent with the requirements set forth in Section 5094.3 and 20 units of accounting study consistent with the regulations promulgated under subdivision (c) of Section 5094.6. This evidence shall be presented at the time of application for the certified public accountant license. Nothing herein shall be deemed inconsistent with Section 5094 or 5094.6. Nothing herein shall be construed to be inconsistent with prevailing academic practice regarding the completion of units.

~~(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.~~

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) Applicants completing education at a college or university located outside of this state, meeting, at a minimum, the standards described in Section 5094, shall be deemed to meet the educational requirements of this section if the board determines that the education is substantially equivalent to the standards of education specified under this chapter.

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**CBA Item XI.A.**
November 15-16, 2012

**DEPARTMENT OF CONSUMER AFFAIRS**
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

**DRAFT**

# MINUTES OF THE
## SEPTEMBER 20-21, 2012
## CBA MEETING

Wyndham Irvine
17941 Von Karman Ave.
Irvine, CA 92614

TELECONFERENCE LOCATION:
Bureau of Automotive Repair (Field Office)
1361 Winchester Blvd. Ste. 206
San Jose, CA 95117

Roll Call and Call to Order.

CBA President Marshal Oldman called the meeting to order at 12:30 p.m. on Thursday, September 20, 2012 at the Wyndham Irvine. The meeting recessed at 3:59 p.m. President Oldman reconvened the meeting at 9:03 a.m. on September 21, 2012 and the meeting adjourned at 10:01 a.m.

| CBA Members | September 20, 2012 |
|---|---|
| Marshal Oldman, President | 12:30 p.m. to 3:59 p.m. |
| Leslie LaManna, Vice President | 12:30 p.m. to 3:59 p.m. |
| Michael Savoy, Secretary-Treasurer | 12:30 p.m. to 3:59 p.m. |
| Sarah (Sally) Anderson | 12:30 p.m. to 3:59 p.m. |
| Diana Bell | Absent |
| Alicia Berhow | 12:30 p.m. to 3:59 p.m. |
| Michelle Brough | 12:30 p.m. to |
| Donald Driftmier | 12:30 p.m. to 3:59 p.m. |
| Herschel Elkins | Absent |
| Laurence (Larry) Kaplan | 12:30 p.m. to 3:59 p.m. |
| Louise Kirkbride* | 12:30 p.m. to 3:59 p.m. |
| Kitak (K.T.) Leung | 12:30 a.m. to 3:59 p.m. |
| Manuel Ramirez | 12:30 p.m. to 3:59 p.m. |
| David Swartz | 12:30 p.m. to 3:59 p.m. |

| CBA Members | September 21, 2012 |
|---|---|
| Marshal Oldman, President | 9:01 a.m. to 10:01 a.m. |
| Leslie LaManna, Vice President | 9:01 a.m. to 10:01 a.m. |
| Michael Savoy, Secretary-Treasurer | 9:01 a.m. to 10:01 a.m. |
| Sarah (Sally) Anderson | 9:01 a.m. to 10:01 a.m. |
| Diana Bell | Absent |
| Alicia Berhow | 9:01 a.m. to 10:01 a.m. |
| Michelle Brough | Absent |
| Donald Driftmier | 9:01 a.m. to 10:01 a.m. |
| Herschel Elkins | Absent |
| Laurence (Larry) Kaplan | 9:01 a.m. to 10:01 a.m. |
| Louise Kirkbride | Absent |
| Kitak (K.T.) Leung | 9:53 a.m. to 10:01 a.m. |
| Manuel Ramirez | 9:01 a.m. to 10:01 a.m. |
| David Swartz | 9:01 a.m. to 10:01 a.m. |

* Ms. Kirkbride attended the CBA meeting from a teleconference location.

Staff and Legal Counsel

Patti Bowers, Executive Officer
Rich Andres, Information Technology Staff
Paul Fisher, Supervising Investigative CPA
Dominic Franzella, Chief, Licensing Division
Rafael Ixta, Chief, Enforcement Division
Nick Ng, Manager, Administration Unit
Kari O'Connor, Board Relations Analyst
Deanne Pearce, Assistant Executive Officer
Kristy Shellans, Legal Counsel, Department of Consumer Affairs (DCA)
Carl Sonne, Deputy Attorney General, Department of Justice (DOJ)
Matthew Stanley, Legislation/Regulation Analyst

Committee Chairs and Members

Nancy Corrigan, Chair, Peer Review Oversight Committee (PROC)
Cheryl Gerhardt, Chair, Enforcement Advisory Committee (EAC)
Fausto Hinojosa, Chair, Qualifications Committee (QC)

Other Participants

Kevin Berggren, Center for Public Interest Law (CPIL)
Dan Dustin, National Association of State Board of Accountancy (NASBA)
Jason Fox, California Society of CPAs (CalCPA)
Ed Howard, CPIL

Joe Petito, The Accountants Coalition
Pilar Onate-Quintana, KP Public Affairs
Jonathan Ross, KP Public Affairs
Hal Schultz, CalCPA
Jeannie Tindel, CalCPA
Amy Yerkey, Administrative Law Judge (ALJ), Office of Administrative Hearings

I. Report of the President

Mr. Oldman announced that Senate Bill (SB) 1405 regarding mobility and Assembly Bill (AB) 1904 regarding military spouses have been signed by the Governor.

**At this time, CBA members heard Agenda Item I.B.**

A. Discussion on the Role of the Qualifications Committee (QC).

Mr. Hinojoso provided an overview of this item. Mr. Hinojoso stated that the QC's role is to serve as an advisory committee to the CBA, assisting in its licensure activities by conducting work paper reviews and interviewing applicants to evaluate if their experience satisfies the requirements for CPA licensure. Mr. Hinojoso stated that the primary function of the QC is to perform personal appearances and Section 69 reviews. Mr. Hinojoso noted that the QC is also occasionally called upon to mediate applicant/supervisor disputes regarding work experience. In these cases, the QC will conduct its work paper review and conducts interviews to evaluate whether the work experience satisfies the requirements for CPA licensure. Mr. Hinojoso further stated that as part of its advisory role, the QC also conducts an annual internal audit, usually every July, on a percentage of all approved applications.

Ms. Anderson inquired if members that makeup the QC presently have adequate experience to review all candidates and types of work that they perform.

Mr. Hinojoso stated that there is a significant and sufficient amount of experience in all areas.

Ms. Anderson suggested that for future re-appointments a matrix be developed to identify the skill base of the current QC members and candidates for appointment/re-appointment.

B. Announcement Regarding Annual Officer Elections.

Mr. Oldman announced that Annual Officer Elections will be held at the

November CBA meeting.

C. Announcement of CBA Leadership Award of Excellence.

Mr. Oldman announced that the recipients of this year's CBA Leadership Award of Excellence are Cindi Fuller, Renewal and Continuing Competency Unit Coordinator and Suzanne Gracia, Examination Unit Coordinator.

II. Report of the Vice President.

A. Recommendations for Appointment(s) to the Enforcement Advisory Committee (EAC).

**It was moved by Ms. LaManna, seconded by Mr. Ramirez and unanimously carried by those present to reappoint EAC members Joseph Buniva, Gary Caine, Robert A. Lee, Seid Sadat, and Michael Schwartz.**

B. Recommendations for Appointment(s) to the Qualifications Committee (QC).

**It was moved by Ms. LaManna, seconded by Mr. Driftmier and unanimously carried by those present to reappoint QC members Carlos Aguila, Michael Haas, Charles Hester, Casandra Moore-Hudnall, and James Woyce.**

C. Recommendations for Appointments/Reappointments to the Peer Review Oversight Committee (PROC).

There was no report for this item.

III. Report of the Secretary/Treasurer

A. Discussion of Governor's Budget.

There was no report on this item.

B. Fiscal Year 2011-2012 Year End Financial Report.

Mr. Savoy reported the revenue from license renewals has decreased due to the reduction in license renewal fees.

C. Report of the Budget Taskforce – Licensing Fee Analyses and Discussion of Reserve.

Mr. Ng reported that the Budget Taskforce, comprised of Mr. Savoy and Mr. Ramirez, worked with staff to analyze several scenarios which would reduce the amount of funds in reserve. The Taskforce determined that further steps beyond a 40 percent reduction in license renewal fees may be necessary to lower reserve levels. Mr. Ng stated that presently the CBA has approximately $14 million in reserve. Mr. Ng further stated that there is no statutory requirement for the CBA to have a specific amount of funds in reserves. Mr. Ng stated that the Taskforce suggested that a four-year plan be developed, to reduce the reserve to a three-month level. Based on current projections, reserves at a three-month level would not adversely impact operations and would still allow enough for funding litigation and enforcement costs for 18 months.

Mr. Ng stated that staff has provided several scenarios (Attachment __) to bring the reserve to the level suggested by the Taskforce. Mr. Ng further noted that any fee reductions will be a regulatory change and require approval by the Department of Consumer Affairs, Department of Finance and the Office of Administrative Law.

Mr. Ramirez commented that he prefers Scenario 4, which targets 60 percent reduction in license renewal fees. Mr. Ramirez stated that this scenario would allow revenues to match expenses without creating the possibility of a deficit. Mr. Ramirez suggested that the CBA be more proactive in trying to match revenue with expenses as closely as possible and licensees should pay a fair fee.

**It was moved by Mr. Ramirez, and seconded by Ms. Brough that Scenario 4, which reduces license renewal fees 60 percent, be chosen to reduce the amount of funds in reserve. (This motion was later amended).**

Mr. Kaplan stated that he prefers Scenario 3, which included reductions in examination and licensing application fees because it benefits individuals just starting a career.

Mr. Ramirez suggested combining Scenario 3 and 4 to achieve $1.8 million in reserve.

Mr. Swartz commented that $1.8 million is a good amount to have in reserve, and that a hybrid between Scenario 3 and 4 seemed appropriate. Mr. Swartz agreed that fees for licensing applications should be reduced.

**It was moved by Mr. Ramirez, and seconded by Ms. Anderson to use Scenario 3 and to adjust the fee levels for all application fees to a level which would reduce the reserve to $1.8 million. (This motion**

**was later amended.)**

Mr. Ramirez commented that the CBA has not considered that it has 100 percent expenditures. Mr. Ramirez stated that furloughs create $2 million in reserves, and is not considered in the scenarios provided. This could lead to increasing the reserve by $1 million to $3 million per year over a four-year period.

Mr. Ramirez inquired if the reduction being considered should be for a two-year period of time, rather than a four-year period of time.

Mr. Oldman stated that the CBA needs more time to adjust to factors such as furloughs, revenue received, state of the economy and that when considering changes in revenue, it should be done cautiously.

Mr. Savoy stated that two years may be too short of a window to reduce the reserve.

Mr. Ramirez commented that a four-year budgetary adjustment is too long and that two years is a better time period in order to serve our licensees.

Mr. Ramirez then amended his earlier motion. **It was moved by Mr. Ramirez, seconded by Ms. Brough and unanimously carried by those present to direct staff to bring back an appropriate fee reduction in Scenario 3 to get the level in reserve to $1.8 million in two years, understanding that a fee reduction will not take effect until Fiscal Year 2014-15.**

IV. Report of the Executive Officer (EO)

A. Update on Staffing.

Ms. Bowers reported that the CBA is actively recruiting for four vacancies.

B. Update on CBA 2010-2012 Communications and Outreach Plan (Written Report Only).

C. CBA 2011-2012 Annual Report.

Ms. Pearce provided an overview of this item. Ms. Pearce stated that the report highlights various accomplishments in CBA programs on an annual basis.

Ms. Anderson commended staff for a great job on the CBA 2011-2012 Annual Report.

D. Report on Customer Satisfaction with CBA Services.

Ms. Pearce provided an overview of this item. Ms. Pearce stated that the CBA Customer Satisfaction Survey is available on the CBA website. According to this survey, 70 percent are satisfied or very satisfied with the customer service received at the CBA. Ms. Pearce stated that the CBA is focused with providing excellent customer service and will continue to set goals to increase that percentage.

E. Update on Bulls on Which the CBA Has Taken A Position (AB 1345, AB 1409, AB 1588, AB 1904, AB 2570, SB 103, SB 1099. SB 1327, SB 1405 and SB 1576) and Report on Newly Amended Bills Identified During the Final Week of Session (AB 1489, SB 71, and SB 1025).

Mr. Stanley provided an overview of this item. Mr. Stanley stated that the Legislature ended business on August 31, 2012 and all bills are currently on the Governor's desk for signature or veto. Bills that have been signed include AB 1345, AB 1904, SB 1099. Mr. Stanley stated that for those bills yet to be signed by the Governor, prior to passing out of the Legislature, some changes were made to a few bills which the CBA has taken a position. Mr. Stanley noted that staff are not recommending changes in position as none of the changes to the bills were significant to warrant doing so.

Regarding AB 1345, Mr. Stanley stated that a letter was sent to the Governor stating that the CBA did not support AB 1345 bill.

Mr. Stanley noted that SB 71 is a budget bill to eliminate extraneous committees in government including the CBA's Ethics Curriculum Committee.

Mr. Stanley stated that AB 1588 would exempt active-duty military licensees in DCA from license renewal fees, continuing education, and other renewal requirements. Mr. Stanley further stated the CBA will be exempt from AB 1588 because a similar program, SB 1405, will be implemented; however, there is a one-year time difference between the implementation date of AB 1588 and SB 1405. Since AB 1588 becomes effective January 1, 2013 and SB 1405 does not become effective until January 1, 2014, AB 1588 will be applicable to the CBA for one year.

Mr. Stanley stated that SB 1025 was amended at the end of session to apply to the CBA, and the CBA has not previously taken a position on this bill. SB 1025 requires all regulatory entities to review its regulations and to change any regulations that are duplicative. Mr. Stanley stated that the CBA already did this at the beginning of 2012.

Mr. Stanley stated that SB 1405 was amended to include everything the CBA requested at its July 2012 meeting. These changes included; clarifying disqualifying conditions, additional actions taken by other boards of accountancy that would necessitate a cease practice in California, and a review of other states' websites is on a biennial basis.

V. Report of the Licensing Chief.

A. Report on Licensing Division.

Mr. Franzella provided an overview of this item (See Attachment__). Mr. Franzella reported that the processing time for first time examination applicants is at 32 days, which is a slightly longer processing time than usual. He noted that the increase in processing time is due to a significant increase in the volume of applications received. Mr. Franzella also stated that the Examination Unit is recruiting for a vacant position.

B. Licensing Educational Changes Taskforce – Project Plan for Implementation of the New Educational Requirements for CPA Licensure Set to Take Effect January 1, 2014.

Mr. Franzella stated that an Internal Taskforce comprised of Examination and Initial Licensing unit staff has been established to facilitate a smooth transition to the new educational requirements for CPA licensure. Mr. Franzella further stated that the Taskforce has placed a heavy emphasis on outreach.

Mr. Ramirez suggested that information regarding the new educational requirements for CPA licensure be sent to accounting societies and Beta Alpha Si. Mr. Ramirez further suggested that a letter should be sent to the accounting society President at each campus to ensure that information about the new educational requirements is shared with accounting students.

VI. Report of the Enforcement Chief.

A. Enforcement Division Report.

Mr. Ixta provided an overview of this item (See Attachment__).

Mr. Ixta stated that a new format of the Enforcement Division Report is being presented to give CBA members a more comprehensive overview of the activities in the Enforcement Division and to provide comparative information over the past two fiscal years.

Mr. Driftmier inquired if there is a trend in what types of complaints are

being filed.

Mr. Ixta stated that the most common reason for a complaint to be filed is peer review. Mr. Ixta further stated that in order to issue a citation for peer review, a complaint must be opened. Mr. ixta stated that almost 1,000 complaints have resulted from individuals failing to file a peer review reporting form.

Mr. Ramirez suggested including in the Enforcement Division Report the percentage of claims from the PCAOB that are investigated.

Mr. Ramirez suggested that regarding peer review, a communication should be available to licensees possibly on the CBA website, to articulate the common reason for a "fail" peer review report.

Mr. Ixta stated that at the CBA's request, staff has reviewed 373 peer review reporting forms to verify accuracy. Of the 373 reports, 91 are being referred for further investigation.

Mr. Ixta provided CBA members with the status of enforcement cases that are pending at the Attorney General's office that are more than 24 months.

Mr. Ixta stated that aggressive action plans have been developed to prioritize all technical over 365 days old and non-technical cases over 100 days old.

VII. Open Session.

A. Kwang-Ho Lee – Petition for Reinstatement of Revoked CPA Certificate.

Mr. Kwang-Ho Lee appeared before CBA members to petition for the reinstatement of his revoked certificate.

ALJ Amy Yerkey and the CBA members heard the petition and convened into executive closed session to deliberate the matter. ALJ Yerkey will prepare the decision.

B. Gladstein CPA – Petition for Termination of Probation.

Mr. Gladstein appeared before CBA members to petition for termination of probation.

Administrative Law Judge Amy Yerkey and the CBA members heard the petition and convened into executive closed session to deliberate

the matter. ALJ Yerkey will prepare the decision.

C. Stuart Gladstein – Petition for Reduction of Penalty.

Mr. Gladstein appeared before the CBA members to petition for reduction of penalty.

ALJ Amy Yerkey and the CBA members heard the petition and convened into executive closed session to deliberate the matter. ALJ Yerkey will prepare the decision.

VIII. Closed Session. Pursuant to Government Code Section 11126 (c)(3), the CBA Convened into Closed Session to Deliberate on Disciplinary Matters (stipulations, Default Decisions, Proposed Decisions, Petitions for Termination of Probation, Petitions for Reduction of Penalty and Petitions for Reinstatement).

IX. Regulations.

A. Regulation Hearing Regarding Title 16, California Code of Regulations (CCR) Sections 12, 12.5, 37, 80, 80.1, 80.2, 81, 87, 87.1, 87.7, 87.8, 87.9, 88, 88.1, 88.2 and 89 – Continuing Education.

Mr. Stanley read the following statement regarding the regulation hearing into the record.

"This is a public hearing on proposed regulations of the California Board of Accountancy, Department of Consumer Affairs, to consider adopting regulations for a Retired Status License. On behalf of the Board and its staff, I'd like to welcome you. My name is Matthew Stanley and I serve as the Board's Regulation Analyst. I will preside over this hearing on behalf of the Board and the Department."

"The California Board of Accountancy is contemplating this action pursuant to the authority vested by Sections of the Business and Professions Code, authorizing the Board to amend, adopt, or repeal regulations for the administration and enforcement of the Chapter 1 of Division 3 of the Business and Professions Code."

"For the record, the date today is September 21, 2012 and the time is approximately 9:02 a.m. Our hearing is being held at the Wyndham Irvine at 17941 Von Karman Ave. in Irvine, California."

"The notice for the hearing on these proposed regulations was published by the Office of Administrative Law. Interested parties on our mailing list have been notified of today's hearing. The language of the proposed regulations

has been mailed to those who requested it and has been available on the board's Web site and upon request by other members of the public. Copies of the proposed regulations are available at the back of the room."

"If the Board has received written comments on the proposal, those comments will be entered into the official record of the proceedings. The Board shall be provided and shall consider all written comments received up until 5:00 p.m., September 17, 2012. Anyone who wishes to comment in writing but does not want to speak today is welcome to do so. If we receive written comments on the proposed regulations, they will be acknowledged and entered into the official record of the rulemaking proceedings."

"Those persons interested in testifying today should identify themselves and the section or subsection of the proposed regulations that they wish to address. Individuals will be called to testify in the order determined by recognition from the hearing officer. If you have a comment about the proposed regulation or any part or specific subsection of the proposal, please step up to the microphone and give your name, spelling your last name and tell us what organization you represent, if any. Speak loudly enough for your comments to be heard and recorded. Remember, it's not necessary to repeat the testimony of previous commentators. It is sufficient if you simply say that you agree with what a previous speaker has stated. Written testimony can be summarized but should not be read. When you are testifying, please identify the particular regulation proposal you are addressing. Please comment only on provisions of the article under discussion. "

"If you have a question about a proposed regulation, please re-phrase your question as a comment. For example, instead of asking what a particular subdivision means, you should state that the language is unclear and why. This will give the Board an opportunity to address your comments directly when the Board makes its final determination of its response to your comments."

"Please keep in mind that this is a public forum to receive comments on the proposed regulations from interested parties. It is not intended to be a forum for debate or defense of the regulations. After all witnesses have testified, the testimony phase of the hearing will be closed."

"Please raise your hand if you wish to comment on the proposed regulations. Is there anyone else who would like to comment on the proposed regulations?"

"Thank you for participating in this regulation hearing. It is important that public comment on such policy issues be heard prior to the Board taking

action on the proposal. The Board shall take into consideration all comments timely received. Upon careful consideration of all comments, the Board may take action to adopt the proposed text, or it may direct staff to modify the proposed text and make the text available for additional public comment."

No public comments were received.

Mr. Stanley closed the regulation hearing at 9:07 a.m.

B. Discussion and Possible Action to Adopt or Amend Proposed Text at Title 16, California Code of Regulations (CCR) Sections 12, 12.5, 37, 80, 80.1, 80.2, 81, 87, 87.1, 87.7, 87.8, 87.9, 88, 88.1, 88.2 and 89 – Continuing Education (CE).

Mr. Stanley presented a summary of the public comments received on the proposed regulations.

Mr. Stanley stated that a public comment was received regarding Section 88.2 (c)(1)(B), stating that the American Institute of Certified Public Accountants (AICPA) and National Association of State Boards of Accountancy (NASBA) CE standards grants 1.85 minutes of self-study credit per final exam question, but the proposed regulatory language does not allow for final exam questions to be included in the time calculation.

Mr. Stanley stated that a public comment was received stating that Section 88.2 (c)(1)(B) does not include the phrase "if one half hour credits are awarded" when discussing rounding down the time limit to the nearest half-hour for CE courses.

Mr. Stanley noted that staff recommended that the CBA reject this comment as the CBA does grant half hour credit and it would be unnecessary to make a qualifying statement in this section.

Mr. Stanley stated that a public comment was received regarding section 88.1, stating that the proposed regulatory language required CE providers to maintain records for six years, although the NASBA and AICPA CE standards require a CE provider to maintain records for five years.

**It was moved by Ms. Anderson, seconded by Mr. Swartz and unanimously carried by those present to accept this public comment.**

Mr. Stanley stated that a public comment was received regarding the proposed regulatory language, stating that the hours required for fraud CE should not be reduced to four hours.

**It was moved by Ms. Anderson, seconded by Ms. Berhow and carried by those present to reject this public comment. Ms. LaManna opposed.**

Mr. Stanley stated that a public comment was received regarding the proposed regulatory language, stating that the definition of fraud CE should be expanded to include “prevention” and “detection and reporting of fraud affecting financial statements.”

**It was moved by Ms. Anderson, seconded by Ms. Brough and unanimously carried by those present to accept this public comment.**

Mr. Stanley stated that a public comment was received regarding the proposed regulatory language, stating that a single eight-hour fraud course every four years should be allowed, as most CPAs prefer attending class in person and an eight-hour course is a better use of time.

**It was moved by Ms. Anderson, seconded by Ms. Berhow and carried by those present to reject this public comment. Mr. Ramirez abstained.**

Mr. Stanley stated that a public comment was received stating that the eight hour fraud requirement should be counted towards the 24 hours of Accounting and Auditing (A&A) requirement. Mr. Stanley stated that staff recommended rejecting this comment as the CBA has previously determined that it does not consider fraud CE to be included in the A&A CE requirement.

Mr. Stanley stated that a public comment was received regarding the proposed regulatory language, stating that Section 88.1 reduces the minimum number of required monitoring events for webcast CE from two monitoring events every half hour to three monitoring events every hour.

**It was moved by Mr. Driftmier, seconded by Mr. Ramirez and carried unanimously by those present to reject this public comment.**

**It was moved by Mr. Driftmier, seconded by Ms. Anderson and unanimously carried by those present to accept the staff recommended responses to the public comments received.**

**It was moved by Ms. Anderson, seconded by Mr. Swartz and unanimously carried by those present to direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text for an additional 15-day comment period. If**

**after the 15-day public comment period no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations as described in the modified text notice.**

VIII. Committee and Task Force Reports.

A. Committee on Professional Conduct (CPC) (Michael Savoy, Chair).

1. Report of the September 20, 2012 CPC Meeting.

2. Discussion on Policy Related to the Implementation of the New Educational Requirement for CPA Licensure Set to take Effect January 1, 2014.

a. Consideration of Options to Allow in Limited Circumstances the Ability for Candidates to Qualify for the Uniform CPA Examination Prior to the Conferral of a Baccalaureate Degree or Higher.

Mr. Savoy stated that staff presented a situation where, with the implementation of the new educational requirements, more schools may move towards a scenario where they confer a master's and bachelor's degree simultaneously. Mr. Savoy stated that staff outlined limited circumstances under which a student could be allowed to sit for the Uniform CPA Examination prior to the conferral of a bachelor's degree, and these are listed at the bottom of page 2 of agenda item X.A.2.a. Mr. Savoy noted that this would require a legislative change.

**It was moved by Mr. Savoy, seconded by Mr. Driftmier and unanimously carried by those present that the CBA adopt a policy to allow for a student to sit for the CPA Exam under these limited circumstances outlined in staff's recommendation prior to the conferral of a Bachelor's degree, and direct staff to prepare legislative language for consideration at the November 2012 CBA meeting.**

b. Consideration of Options to Expand the List of Qualifying Disciplines in Business and Professions Code Section 5094.3 Related to the Ethics Study Requirement.

Mr. Savoy stated that in July 2011, the CBA approved the Ethics Curriculum Committee's (ECC) ethics study proposal. Mr. Savoy stated that part of this proposal was an option to

complete up to three units in 10 specified disciplines. Mr. Savoy noted that SB 773, which included the ECC's proposed ethics study guidelines, was later amended to remove 7 of the 10 disciplines. Mr. Savoy reported that the CPC discussed whether the CBA should pursue reinstating these disciplines since they were originally based on the ECC's recommendation. Mr. Savoy noted that at the CPC meeting, both CalCPA and CPIL commented that now would not be a good time to reopen the issue. He further stated that the CPC agreed that time should be given to analyze the impact and gather data to determine if the removed disciplines should be added into the requirements.

c. Consideration of Options to Extend the Deadline to Apply for Licensure Under the Present Pathways.

Mr. Savoy stated that the CPC discussed a possible extension of time for individuals that may not have begun their experience requirement early enough to apply for licensure under the present pathways. Mr. Savoy further stated that the CPC discussed how such an extension might affect California's substantial equivalency standing with NASBA.

Mr. Savoy noted that the CPC took no action on this item, but directed staff to look at options for what could be done to make exceptions under these circumstances including looking at how other states may have handled similar situations.

3. Discussion on Initiating a Rulemaking to Adopt Title 16. California Code of Regulations (CCR) Sections 16, 16.1, and 16.2 Regarding Military Inactive Status.

Mr. Savoy reported that staff presented regulatory language that would implement the military inactive status enacted by SB 1405. Mr. Savoy stated that the regulatory language presented included an application for military inactive status, a definition for acceptable proof of military service and discharge date, and information regarding status conversion.

**It was moved by Mr. Swartz, seconded by Mr. Ramirez and unanimously carried by those present that the CBA approve the proposed language and direct staff to initiate the rulemaking process.**

B. Strategic Planning Committee (SPC) (Manuel Ramirez, Chair).

Mr. Ramirez reported that the SPC reviewed the proposed 2013-2015

CBA Strategic Plan. Mr. Ramirez stated that the proposed 2013-2015 Strategic Plan includes an updated vision section and seven goals.

**It was moved by Mr. Ramirez, seconded by Ms. Anderson and unanimously carried by those present that the CBA adopt the proposed 2013-2015 Strategic Plan.**

C. Enforcement Advisory Committee (EAC) (Cheryl Gerhardt, Chair).

1. There was no report for this item.

2. Approval of 2013 EAC Meeting Dates.

**It was moved by Mr. Driftmier, seconded by Ms. Anderson and unanimously carried by those present that the CBA approve the proposed 2013 EAC meeting dates.**

At this time, CBA Agenda Item I.A., Discussion on the Role of the Qualifications Committee (QC) was heard.

D. Qualifications Committee (QC).

1. Report of the August 1, 2012 QC Meeting.

Mr. Hinojosa stated that the QC met on August 1, 2012 and discussed peer training and is working towards finishing a peer training program.

Mr. Hinojosa stated that two personal appearances and two Section 69 reviews were deferred.

E. Peer Review Oversight Committee (PROC)

1. Report of the August 24, 2012 PROC Meeting.

Ms. Corrigan provided an overview of this item. Ms. Corrigan stated that the PROC discussed participation at the July 24, 2012 CalCPA report acceptance body meeting and the AICPA board meeting. Ms. Corrigan stated that the PROC clarified duties and discussed that the CBA sets policies and the CBA will direct the PROC as a committee to research items. Ms. Corrigan further stated that the PROC discussed the format for the 2012 Annual Report and the report will be provided to the CBA in March. Ms. Corrigan stated that the PROC approved and signed a letter to Janice Grey, Chair of the Compliance Assurance Committee of NASBA. Ms. Corrigan further stated that the letter to Ms. Grey is seeking information to determine what level of PROC oversight over the National Peer Review Committee (NPRC) is

appropriate. Ms. Corrigan stated that the PROC determined that it will now meet four times per year.

2. Approval of 2013 PROC Meeting Dates.

**It was moved by Mr. Ramirez, seconded by Mr. Swartz and unanimously carried by those present to approve the 2013 PROC meeting dates**.

IX. Acceptance of Minutes.

A. Draft Minutes of the July 26, 2012 CBA Meeting.

**It was moved by Mr. Ramirez, seconded by Mr. Swartz and unanimously carried by those present to accept agenda item IX.A. with the revision to page 19452 of the July 26, 2012 CBA minutes.**

B. Draft Minutes of the July 25, 2012 CBA Strategic Planning Workshop.

**It was moved by Ms. Anderson, seconded by Ms. LaManna and unanimously carried by those present to accept the minutes of the July 25, 2012 CBA Strategic Planning Workshop.**

C. Minutes of the May 25, 2012 CPC Meeting.

**It was moved by Ms. Anderson, seconded by Ms. Berhow and unanimously carried by those present to accept the minutes of the May 25, 2012 CPC meeting.**

D. Minutes of the March 23, 2012 SPC Meeting.

**It was moved by Mr. Ramirez, seconded by Ms. Berhow and unanimously carried by those present to accept the minutes of the March 23, 2012 SPC meeting.**

E. Minutes of the April 25, 2012 QC Meeting.

**It was moved by Ms. Berhow, seconded by Ms. LaManna and unanimously carried by those present to accept the minutes of the April 25, 2012 QC meeting.**

F. Minutes of the May 3, 2012 EAC Meeting.

**It was moved by Ms. Berhow, seconded by Ms. LaManna and unanimously carried by those present to accept the minutes of**

**the May 3, 2012 EAC Meeting.**

G. Minutes of the June 16, 2012 PROC Meeting.

**It was moved by Mr. Driftmier, seconded by Ms. Anderson and unanimously carried by those present to accept the minutes of the June 16, 2012 PROC meeting.**

X. Other Business.

A. American Institute of Certified Public Accountants (AICPA).

There was no report for this item.

B. National Association of State Boards of Accountancy (NASBA).

1. Introduction of NASBA representative Dan Dustin

Mr. Oldman introduced NASBA representative Dan Dustin, CPA who serves as the NASBA Vice President of State Board Relations. Mr. Dustin gave background information on himself and explained his role as an advocate for the state boards with NASBA. Mr. Dustin informed the CBA of several events that NASBA has been working on; including NASBA U, the Accountancy Licensee Database (ALD) and legislation relating to mobility.

2. NASBA Focus Questions.

**It was moved by Ms. Berhow, seconded by Mr. Ramirez and unanimously carried by those present to accept the proposed responses to the NASBA Focus Questions.**

3. Update on NASBA Committees.

a. Accountancy Licensee Database (ALD) Task Force.

There was no report for this item.

b. Board Relevance & Effectiveness Committee.

There was no report for this item.

c. Education Committee.

There was no report for this item.

d. Uniform Accountancy Act Committee (UAA).

There was no report for this item.

XI. Closing Business

A. Public Comments.*

No public comments were received.

B. Agenda Items for Future CBA Meetings.

There was no discussion on this item.

C. Press Release Focus

Ms. Pearce stated that a press release for SB 1405 was issued on September 20, 2012. Additionally, a press release would be issued on the 2013-2015 CBA Strategic Plan and the 2011-2012 CBA Annual Report.

Adjournment.

President Oldman adjourned the meeting at 10:01 a.m. on Friday, September 21, 2012.

_____ Marshal A. Oldman, Esq., President

_____ Michael M. Savoy, CPA, Secretary-Treasurer

Kari O'Connor, Board Relations Analyst, and Patti Bowers, Executive Officer, CBA, prepared the CBA meeting minutes. If you have any questions, please call (916) 561-1718.

CALIFORNIA BOARD OF ACCOUNTANCY

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| **CPC Item I.** | **CBA Item XI.B.** |
|---|---|
| November 15, 2012 | November 15-16, 2012 |

# CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
# COMMITTEE ON PROFESSIONAL CONDUCT (CPC)
# MINUTES OF THE MEETING

**DRAFT**

September 20, 2012

Wyndham Irvine
17941 Von Karman Ave.
Irvine, CA 92614
Telephone: (949) 863-1999
Fax: (949) 474-7236

CALL TO ORDER

Michael Savoy, Chair, called the meeting of the Committee on Professional Conduct (CPC) to order at 9:31 a.m. Mr. Savoy requested that the role be called.

Present
Michael M. Savoy, Chair
Sarah (Sally) Anderson
Don Driftmier
Louise Kirkbride
Leslie LaManna
David Swartz

CBA Members Observing
Laurence (Larry) Kaplan
Manuel Ramirez

CBA Staff and Legal Counsel
Patti Bowers, Executive Officer
Deanne Pearce, Assistant Executive Officer
Rich Andres, Information Technology Staff
Paul Fisher, Supervising Investigative CPA
Dominic Franzella, Chief, Licensing Division
Rafael Ixta, Chief, Enforcement Division
Nick Ng, Administration Manager

Kari O'Connor, Executive Analyst
Kristy Shellans, Senior Staff Counsel, DCA Legal Affairs
Carl Sonne, Deputy Attorney General, Department of Justice
Matthew Stanley, Legislation/Regulation Analyst

Other Participants
Jason Fox, California Society of CPAs (CalCPA)
Ed Howard, Center for Public Interest Law
Joe Petito, Accountants Coalition
Jonathan Ross, KP Public Affairs
Hal Schultz, CalCPA
Jeannie Tindel, CalCPA

I. Approve Minutes of the May 25, 2012 CPC Meeting

**It was moved by Mr. Driftmier, seconded by Mr. Swartz and carried unanimously to approve the minutes of the May 25, 2012 CPC meeting.**

II. Discussion on Policy Related to the Implementation of New Educational Requirements for CPA Licensure Set to Take Effect January 1, 2014.

A. Consideration of Option to Allow in Limited Circumstances the Ability for Candidates to Qualify for the Uniform CPA Examination (CPA Exam) Prior to the Conferral of a Baccalaureate Degree or Higher.

Mr. Franzella presented an overview of this item. He identified a situation that, with the new education requirements could become more prevalent regarding colleges and universities which confer a Master and Baccalaureate degree simultaneously. Under current law which requires the conferral of a Bachelor degree in order to take the CPA Exam, students in this situation would have to wait until the Master's degree is completed to take the CPA Exam. Mr. Franzella outlined the following limited circumstances under which such a student could be allowed to sit for the CPA Exam:

- The college or university must submit a letter along with the applicant's transcript attesting to the fact that the individual completed all the requirements for a baccalaureate degree;
- The letter must include the date the individual met all of the baccalaureate degree requirements; and,
- The letter must include a statement indicating that the sole reason the baccalaureate degree has not been conferred is because the individual is enrolled in a five-year master's program.

Mr. Franzella stated that a statutory change would be needed to allow for this exception, which requires legislation.

**It was moved by Mr. Driftmier, seconded by Ms. Anderson and carried unanimously to recommend that the CBA adopt a policy to allow for a student to sit for the CPA Exam under these limited circumstances prior to the conferral of a Bachelor's degree, and direct staff to prepare legislative language for consideration at the November 2012 CBA meeting.**

B. Consideration of Options to Expand the List of Qualifying Disciplines in Business and Professions Code Section 5094.3 Related to the Ethics Study Requirement.

Mr. Franzella stated that, after the Ethics Curriculum Committee's (ECC) ethics study proposal was approved by the CBA in July 2011, it was subsequently amended into Senate Bill (SB) 773. Part of this proposal was an option to complete three units in ten specified disciplines. SB 773 was later amended to remove seven of these ten disciplines, retaining only Philosophy, Religion, and Theology.

Ms. Tindel and Mr. Howard both testified that this would not be the appropriate time to reinstate the seven other disciplines as it may cause confusion to the students taking the classes.

Mr. Driftmier indicated that it was unfortunate that not all of the expertise and work of the ECC members was incorporated into the final version of SB 773 but agreed that this is not the appropriate time to restore the elements which were removed.

The CPC agreed that time should be given to analyze the impact of this requirement and gather data to see if adding the seven disciplines back into the ethics requirements might make sense in the future.

C. Consideration of Options to Extend the Deadline to Apply for Licensure Under the Present Pathways

Mr. Franzella presented this item and indicated that with the changes to licensure requirements that will begin on January 1, 2014, applicants for licensure under Pathway 1 would have needed to begin their two years of general accounting experience on or before January 1, 2012. There is a concern that some potential applicants may not have begun their experience requirement early enough. The main concern regarding a possible extension of time for these individuals revolves around how such an extension might affect California's substantial equivalency standing with the National Association of State Boards of Accountancy.

An email was shared from an individual who had began work in mid-January 2012, who will not be able to complete the two year experience requirement for licensure under Pathway 1 prior to its sunset on January 1, 2014.

The CPC took no action on this item, but directed staff to look at options for what could be done to make exceptions under these circumstances including looking at how other states may have handled implementation issues when they transitioned to mobility.

III. Discussion on Initiating a Rulemaking to Adopt Title 16, California Code of Regulations Sections 16, 16.1, and 16.2 Regarding Military Inactive Status

Mr. Stanley presented regulatory language that would implement the military inactive status should SB 1405 be signed by the Governor. The language includes an application for the status, definition for acceptable proof of military service and discharge date, and provides for status conversion. It also specifies that upon conversion, the licensee only needs to pay the renewal fee if they apply more than 12 months prior to their next renewal date.

**It was moved by Mr. Driftmier, seconded by Ms. Anderson and carried unanimously to recommend that the CBA approve the proposed language and direct staff to initiate the rulemaking process provided SB 1405 is signed into law.**

IV. Public Comments

No Public Comments were received

V. Agenda Items for Next Meeting

No agenda items were identified.

There being no further business, the meeting was adjourned at 10:14 a.m.

CALIFORNIA BOARD OF ACCOUNTANCY

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**LC Item I**
**November 15, 2012**

**CBA Item XI.C**
**November 15-16, 2012**

# LEGISLATIVE COMMITTEE MINUTES OF THE MEETING

**DRAFT**

July 26, 2012

Tsakopoulos Library Galleria
828 I Street
Sacramento, CA 95814
Telephone: (916) 264-2800
Fax: (916) 264-2809

CALL TO ORDER

Sally Anderson, Chair, called the meeting of the Legislative Committee (LC) to order at 9:30 a.m. Ms. Anderson requested that the roll be called.

Present
Sally Anderson, Chair
Diana Bell
Herschel Elkins
Larry Kaplan
Louise Kirkbride
Manuel Ramirez
Michael Savoy

CBA Members Observing
Alicia Berhow
Michelle Brough
Don Driftmier
Leslie LaManna
K.T. Leung
Marshal Oldman
David Swartz

CBA Staff and Legal Counsel
Patti Bowers, Executive Officer

Deanne Pearce, Assistant Executive Officer
Rich Andres, Information Technology Staff
Paul Fisher, Supervising Investigative CPA
Dominic Franzella, Chief, Licensing Division
Lauren Hersh, Information Officer
Rafael Ixta, Chief, Enforcement Division
Kari O'Connor, Executive Analyst
Kristy Shellans, Senior Staff Counsel, DCA Legal Affairs
Carl Sonne, Deputy Attorney General, Department of Justice
Matthew Stanley, Legislation/Regulation Analyst

Other Participants
Jason Fox, California Society of CPAs (CalCPA)
Pilar Onate-Quintana, KP Public Affairs
Joe Petito, Accountants Coalition
Jonathan Ross, KP Public Affairs
Hal Schultz, CalCPA
Jeannie Tindel, CalCPA

I. Approve Minutes of the May 24, 2012 LC Meeting

**It was moved by Mr. Ramirez, seconded by Ms. Bell and unanimously carried by those present to approve the minutes of the May 24, 2012 LC Meeting.**

II. Update on Bills on Which the CBA Has Taken a Position (AB 1345, AB 1409, AB 1537, AB 1588, AB 1904, AB 1914, AB 1982, AB 2022, AB 2041, AB 2570, SB 103, SB 975, SB 1099, SB 1327 and SB 1576)

Mr. Stanley presented an update on bills which the CBA has taken a position. Staff recommended maintaining current positions on AB 1409, AB 2570, SB 103, and SB 1099, because they either had not been amended or amendments that were made were minor technical amendments.

Mr. Stanley stated that AB 1537, AB 1914, AB 1982, AB 2022, AB 2041, and SB 975, have either failed or have been amended in such a way as they no longer are relevant to the CBA. Staff recommended the CBA discontinue following these bills.

**It was moved by Mr. Ramirez, seconded by Mr. Elkins and unanimously carried to recommend the CBA discontinue following AB 1537, AB 1914, AB 1982, AB 2022, AB 2041 and SB 975.**

Mr. Stanley stated that the remaining bills that the CBA had taken positions on are still relevant to the CBA and have had significant amendments to them since the May 2012 CBA meeting.

AB 1345 – Audit Partner Rotation

Mr. Stanley indicated that AB 1345 would require audit partner rotation. Based on recommendations made at the May 2012 CBA meeting, the CBA provided four proposed amendments to the bill. The only proposal that was accepted and amended into the bill was the one clarifying that the time frame for when audit partner rotation would begin. The remaining proposals have not yet been acted upon. Staff recommended maintaining the Support if Amended position that the CBA adopted.

Mr. Ramirez asked what the three proposed amendments that were not adopted were.

Mr. Stanley stated that the remaining proposals were requiring only the lead audit partner be subject to mandatory rotation, adding a two-year cooling off period, and including a payroll schedule to the audit requirements.

Mr. Ramirez stated concerns about the remaining amendments not being adopted and inquired about options to relay those concerns to the author and appropriations committee. Mr. Stanley recommended a letter from the Executive Officer. Mr. Ramirez suggested that the Board President or a member of the LC meet with the author.

Ms. Bowers indicated that at the last board meeting the President designated Ms. Anderson to act as a liaison on this bill with the author and perhaps another meeting is in order to discuss the remaining proposals.

Mr. Ramirez and Ms. Bell asked for clarification of the difference between what staff will send if the decision is to Support if Amended or Oppose unless Amended. Mr. Stanley stated that a Support if Amended position, where the amendments are not taken, would result in no letter of support being sent to the Governor, whereas a letter of opposition would be sent to the Governor if the position were Oppose Unless Amended.

Mr. Ramirez asked that a letter be sent to the Governor at that time stating that the CBA is not in support of the bill.

**It was moved by Mr. Ramirez, seconded by Mr. Elkins and unanimously carried to recommend the CBA maintain its position of Support if Amended on AB 1345.**

AB 1588 – Active Duty Military Reservists

Mr. Stanley explained AB 1588 would require all boards in DCA to waive renewal fees and continuing education (CE) for active duty military reservists and California National Guard members. The author's office worked with boards that had expressed an opinion on this bill. The CBA had requested an amendment to exclude CE from the bill as it already has the authority to exempt CE for those on military duty. However, the other boards, which do not have that authority, requested that the provision remain and the amendment was not taken. The author did take several other amendments that improve the bill including adding authority for the boards to implement regulations. The amendments further clarified that licensees cannot practice if they are exempted under this law. Although the CBA proposed amendment was not taken, the bill was improved significantly and staff recommend that CBA adopt a support position on this bill.

Ms. Anderson asked if a spouse could request the exemption or could file on a spouse's behalf. Mr. Stanley confirmed that this was correct but clarified that instead of just a spouse or licensee, other interested parties, such as a son or brother, could also submit the request for the licensee as well.

**It was moved by Mr. Elkins, seconded by Ms. Bell and unanimously carried to recommend the CBA adopt a support position on AB 1588**

AB 1904 – Spouses of military members

Mr. Stanley explained that this bill would have authorized a 180-day temporary license for any spouse or domestic partner of a member of the armed forces stationed in California. After the CBA made a request for several amendments, this bill was significantly amended to take out the temporary license provisions. The bill now states that licensing entities shall expedite the licensing process for these individuals. With the new amendments, all of the CBA's recommended amendments have been addressed, and staff recommend the CBA adopt a support position on AB 1904

**It was moved by Mr. Elkins, seconded by Ms. Bell and unanimously carried to recommend the CBA adopt a support position on AB 1904**

SB 1327 – Governors Website to Assist with Licensing Requirements

Mr. Stanley explained this bill would require the Governor's Office to establish a website to assist with licensing requirements for individuals starting a business. It would have required all licensing entities to submit licensing information for use

on this website. The CBA previously took an oppose if not amended position on the bill requesting that professional licensing entities be exempted.

Ms. Bowers was invited to a meeting with the author's office and a member of the Governor's Office of Business and Economic Development for a presentation of the website referred to as CalGold, which is presently comprised of voluntary information. Ms. Bowers communicated the CBA's concerns, and the bill was subsequently amended so that licensing entities only will be required to provide a link to their licensing information. Requiring only the link has the potential effect of driving traffic to the CBA website. With these amendments, staff recommend the CBA adopt a support position on SB 1327 and further recommend that, regardless of the outcome of this bill, that the CBA direct staff to work with CalGold to have the CBA's information placed voluntarily on the website.

**It was moved by Mr. Elkins, seconded by Ms. Bell and carried to recommend the CBA adopt a support position on SB 1327**

SB 1576 –Omnibus Bill

Mr. Stanley explained that the omnibus bill contains many provisions applicable to the CBA and various other boards. The amendments that affect the CBA were mostly technical in nature and would complete the retired status language that had been approved by the CBA in January. Staff recommends the CBA maintain its support position.

**It was moved by Mr. Elkins, seconded by Ms. Bell and unanimously carried to recommend the CBA maintain its support position on SB 1576.**

At this time, discussion returned to AB 1345. Mr. Ramirez asked what action staff would pursue to express our disagreement to the Governor when the CBA adopts a support if amended position and the bill is not amended before it passes.

Mr. Stanley stated that, typically, no further action would be taken. He further stated that if the CBA took an Oppose Unless Amended position, and the bill is not amended, an oppose letter would be sent to the Governor before he signs the bill.

Mr. Ramirez inquired if the CBA has an opportunity to communicate to any legislative committee members the CBA's position before the next vote.

Ms. Bowers stated that the CBA can direct staff to send additional letters or make additional contact at any time on bills it believes warrant the additional communication.

**It was moved by Mr. Ramirez, seconded by Mr. Savoy and carried to direct staff to send a letter further explaining the CBA's position on AB 1345 to the Senate Appropriations Committee members, and to follow up with phone calls. Mr. Elkins and Ms. Kirkbride abstained.**

III. Consideration of Position on SB 1405: Accountancy: Military Service: Practice Privilege

Mr. Stanley explained that SB 1405 previously dealt with military inactive status provisions, and while most of those provisions are still in the bill, it was amended on June 19, 2012 to include mobility provisions as well. The amendments provide that California's current practice privilege program would become inoperative on July 1, 2013 and would be replaced with these new practice privilege provisions. These new provisions sunset on January 1, 2019 and are replaced with the current version of practice privilege. With the passage of this bill California would become the 49th of 55 jurisdictions to have mobility provisions in law.

Mr. Stanley explained the contents of the bill including the requirements for a practice privilege, enforcement provisions, and public disclosure provisions.

Mr. Elkins stated that the concept for this bill has been discussed for a number of years and that had SB 1405 been drafted the way the mobility bill was in 2008, he would vote to oppose it. This bill dramatically improves the present system.

Ms. Kirkbride asked what the chief benefits of this bill were to the consumers of California.

Ms. Stanley stated that it gives the consumer more choice. It also requires the CBA to put together a stakeholder group that will be tasked with reviewing the protections in this bill and to ensure that consumers are protected.

Ms. Tindel addressed the board on behalf of CalCPA as co-sponsors of the bill and stated that they believe the bill addresses previous CBA and staff concerns and they believe it satisfies the objective of protecting the public.

Mr. Ramirez inquired whether CPIL would object to this bill.

Ms. Tindel stated that CalCPA has been working with CPIL and no objections have been raised to this point.

Ms. Kirkbride inquired whether a memo from counsel indicated a position by DCA or by counsel personally.

Ms. Shellans stated that she works for the CBA and does not confer with DCA on her position when she writes memos to the CBA. She clarified that she had some concerns and wanted to make sure the board was aware of them. She stated that the CBA is always free to disregard any advice that counsel provides, but it is her duty to be candid and provide her concerns.

Mr. Ross commented that he felt, as co-sponsors of the bill with CalCPA, that he could fairly characterize Mr. Howard's perception of the bill as one that provides improvements and tradeoffs. The bill takes away a requirement to file a form and pay a fee and substitutes the establishment of a website that will have information that is at least equal to what is available now to consumers and the potential to provide even greater access to information.

Ms. Bowers advised the LC that she had spoken with Mr. Howard personally and can state that the communication they had was very consistent with the comments stated here and that CPIL is not opposed to the bill.

**It was moved by Mr. Elkins, seconded by Mr. Ramirez and carried to recommend the CBA adopt a support position on SB 1405. Ms. Kirkbride abstained.**

IV. Additional Legislation Impacting the CBA Identified by Staff After the Posting of the Meeting Notice

Mr. Stanley stated that there was no further legislation to present.

V. Discussion and Possible Action to Amend Business and Professions Code Section 5076 – Peer Review

Mr. Stanley presented this item and explained that current law requires licensees with certain types of practice to undergo peer review in order to renew their license. Under the way the law was written, even licensees renewing in an inactive status must complete a peer review. In March 2010, the CBA directed staff to draft regulatory language to exempt those renewing in an inactive status from peer review. However, at the July 2010 meeting, the concept of retired status was first brought forward and subsequently became law. It was decided to await the final outcome of the legislation before changing the peer review regulations. This year's SB 1576 contains the final provisions of the retired status law.

It was determined that it may be possible to renew inactive and then convert back to active shortly thereafter to avoid the peer review all together. To close this loophole, staff proposed legislative language to require peer review for active status renewals and for converting to active status. Mr. Stanley recommended that the CBA direct staff to request that this language be included in the omnibus bill, SB 1576.

**It was moved by Mr. Ramirez, seconded by Mr. Savoy and unanimously carried to recommend the CBA request that the suggested language be included in the omnibus bill.**

Mr. Ramirez asked for further clarification on the issue of actions staff takes following a Support if Amended position on a bill that is subsequently not amended. He asked if the LC or CBA should direct staff to change their standard practice.

Mr. Elkins stated that it should depend on the situation.

Ms. Bowers stated that staff is always assessing internal processes and on bills where it seems appropriate staff would certainly take steps to provide further communication. She stated she would prefer the flexibility be left in place but if the committee feels additional communication is appropriate and staff are not already taking that approach, further direction would be welcome.

VI. Public Comments

No public comments were received

VII. Agenda Items for Next Meeting

No agenda items were identified.

There being no further business, the meeting was adjourned at 10:19 a.m.

CALIFORNIA BOARD OF ACCOUNTANCY

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**CBA Item XI.D.**
November 15-16, 2012

Department of Consumer Affairs
California Board of Accountancy

Minutes of Meeting
August 1, 2012
CPA Qualifications Committee

Hilton Ontario
700 North Haven Avenue
Ontario, CA 91764

The regularly scheduled meeting of the Certified Public Accountant Qualifications Committee (QC) of the California Board of Accountancy (CBA) was called to order at approximately 10:05 a.m. on August 1, 2012 by QC Chair, Fausto Hinojosa.

QC Members Present

Fausto Hinojosa, Chair
Maurice Eckley, Jr., Vice-Chair
Jenny Bolsky
Gary Bong
Brian Cates
Lewis Fisher
Charles Hester
Alan Lee
Kristina Mapes
Casandra Moore Hudnall
Robert Ruehl

Staff Present

Veronica Daniel, Licensing Manger
Dominic Franzella, Licensing Chief
Stephanie Hoffman, Licensing Coordinator

QC Members Absent

Carlos Aguila
Michael Haas
Ash Shenouda
Jeremy Smith
James Woyce

## I. CHAIRPERSON'S REPORT

A. Approval of the April 25, 2012, QC Meeting Minutes.

**It was moved by Charles Hester, seconded by Jenny Bolsky and unanimously carried by those present to adopt the minutes of the April 25, 2012 QC Meeting.**

B. 1. Minutes of May 24-25, 2012 CBA Meeting

Copies of the meeting minutes were provided to the QC members for reference purposes.

2. Update on the July 26, 2012 CBA Meeting

Mr. Franzella informed the Committee that 10 members of the CBA attended a strategic planning meeting on July 25, 2012, and that a three-year plan covering 2013 – 2015 will be reviewed at the September CBA meeting.

The CBA discussed a bill related to mobility that was introduced in June 2012. If approved, California would be consistent with 49 other states that have adopted mobility laws that allow for no fee, no notification, and no escape. The bill is with the Assembly Appropriations Committee.

## II. REPORT ON ACTIVITIES IN THE INITIAL LICENSING UNIT

The QC was provided the Initial Licensing Unit report, which included a breakdown of the number of applications received by license type, processing timeframes and the number of licenses issued under each pathway. The report also included the number of firm applications received and processing timeframes for those applications. The numbers reported were for the time period of April 2012 – June 2012.

Ms. Daniel also informed the Committee that Vicky Thornton had accepted a position with the California Horse Racing Board.

## III. DISCUSSION RELATED TO APPEARANCES CONDUCTED IN ACCORDANCE WITH TITLE 16, CALIFORNIA CODE OF REGULATIONS, SECTIONS 12.5 AND 69

The Committee discussed a survey related to Section 12.5 and Section 69 appearances for peer training purposes. After extensive discussion, members opted to document notes and best practices during the appearances and provide information back to CBA staff, rather than moving forward with the survey. Also, staff informed members that it will review previously deferred applications and document common reasons for deferral for peer training purposes.

## IV. PUBLIC COMMENT

None.

## V. AGENDA ITEMS FOR FUTURE CPA QUALIFICATIONS COMMITTEE MEETINGS

- Approval of August 1, 2012 QC minutes
- Who is selected to appear before the QC
- Finalization of peer-training

**VI. REVIEW FILES ON INDIVIDUAL APPLICANTS [Closed session to review and deliberate on applicant files as authorized by Government Code Section 11126(c)(2), and Business and Professions Code Sections 5022 and 5023.]**

The QC conducted its annual internal audit of one percent of randomly selected staff approved applications for licensure. A total of 3241 files were approved from July 1, 2011 through June 30, 2012. The QC reviewed 32 files and concurred with all but one of staff's approvals of the applications.

**VII. CONDUCT CLOSED HEARINGS [Closed session in accordance with Government Code Section 11126(c)(2) and (f)(3), and Business and Professions Code Section 5023 to conduct closed hearings to interview individual applicants for CPA licensure].**

C12-020 - Applicant and her employer appeared and presented work papers from her public accounting experience. Applicant was disputing the Certificate of Attest Experience, as submitted. She is currently licensed with general experience.

The work reviewed was complete and no deficiencies were noted. The employer indicated he did not believe the applicant had an understanding of concepts of the requirements of planning and conducting a financial statement audit or performing other attest work that results in an opinion on full disclosure financial statements with minimal supervision as indicated on the Certificate of Attest Experience.

Recommendation: Defer. In order to satisfy the experience requirement for authorization to sign attest reports, the applicant must obtain additional audit or audit equivalent work experience. Any new experience must be obtained under the supervision of a licensee authorized to sign attest reports on attest engagements. The experience must result in an affirmatively completed Certificate of Attest Experience documenting a minimum of 500 hours of attest experience. A determination will then be made as to whether she will be required to reappear with work papers for the QC's review.

C12-021 - Applicant appeared and presented work papers for her foreign (China) public accounting experience. She has 32.25 months, with a 12-month experience requirement.

The audit was performed under Chinese Generally Accepted Auditing Standards (GAAS) with no reference to US GAAS while the financial statements were prepared under Chinese Generally Accepted Accounting Principles (GAAP) with no reference to US GAAP.

Recommendation: Defer. In order to satisfy the experience requirement for authorization to sign attest reports, the applicant must obtain additional experience in planning and conducting a financial statement audit resulting in an opinion on full disclosure financial statements. The experience must result in an affirmatively completed Certificate of Attest Experience documenting a minimum of 500 hours of attest experience. A determination will then be made as to whether or not she will be required to reappear with work papers for the QC's review.

C12-022 - Applicant appeared and presented work papers for his government accounting experience. He has 47 months of experience, with a 12-month experience requirement.

The work reviewed was complete and no deficiencies were noted; however, applicant did not prepare full disclosure financial statements.

Recommendation: Defer. In order to satisfy the experience requirement for authorization to sign attest reports, the applicant must provide a full set of financial statements. Any new experience must be obtained under the supervision of a licensee authorized to sign reports on attest engagements and an affirmative Certificate of Attest Experience must be submitted. A determination will then be made as to whether or not he will be required to reappear with the financial statements for the QC's review.

C12-024 - Applicant and her employer appeared and presented work papers for her public accounting experience. She has 13.5 months of experience, with a 12-month experience requirement.

The work reviewed was complete and no deficiencies were noted. The employer acknowledged, however, that the Certificate of Experience was prematurely submitted and that an applicant would not have the experience necessary with the limited number of audit hours the applicant had obtained.

Recommendation: Defer. In order to satisfy the experience requirement for authorization to sign attest reports, the applicant must obtain additional audit experience and have an affirmatively completed Certificate of Attest Experience submitted. A determination will then be made as to whether or not she will be required to reappear with the work papers for the QC's review.

The firm has been placed on reappearance status.

**The following Section 69 reviews took place on June 27, 2012, and are made a part of these minutes.**

C12-015 - Applicant and his employer appeared and presented work papers for his public accounting experience. Applicant is currently licensed with general experience.

The employer's understanding of the Certificate of Attest Experience was adequate. The work performed by the applicant was reviewed and no deficiencies were noted. The work was adequate to support licensure.

Recommendation: Approve

C12-001 - Applicant and his employer appeared and presented work papers for his government accounting experience. Applicant is currently licensed with general experience.

The work reviewed was complete and no deficiencies were noted. The work was adequate to support licensure.

Recommendation: Approve.

ADJOURNMENT

There being no further business to be conducted, the meeting was adjourned at approximately 3:30 P.M. on August 1, 2012. The next meeting of the CPA Qualifications Committee will be held on October 24, 2012.

_____

Fausto Hinojosa, Chair

Prepared by Stephanie Hoffman, Licensing Coordinator

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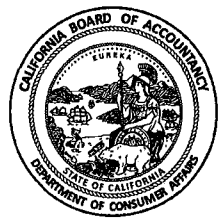

**CBA Item XI.E.**
November 15-16, 2012

# CALIFORNIA BOARD OF ACCOUNTANCY (CBA)
## PEER REVIEW OVERSIGHT COMMITTEE (PROC)

## MINUTES OF THE AUGUST 24, 2012 PROC MEETING

California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone: (916) 263-3680

| PROC Members: | August 24, 2012 |
|---|---|
| Nancy Corrigan, Chair | 10:00 a.m. – 12:17 p.m. |
| Katherine Allanson | 10:00 a.m. – 12:17 p.m. |
| Gary Bong | 10:00 a.m. – 12:17 p.m. |
| T. Ki Lam | 10:00 a.m. – 12:17 p.m. |
| Sherry McCoy | 10:00 a.m. – 12:17 p.m. |
| Robert Lee | 10:00 a.m. – 12:17 p.m. |
| Seid M. Sadat | 10:00 a.m. – 12:17 p.m. |

Staff:
Rafael Ixta, Chief, Enforcement Division
April Freeman, Peer Review Analyst

Other Participants:
Linda McCrone, California Society of Certified Public Accountants (CalCPA)
Jeannie Tindel, CalCPA
Jason Fox, CalCPA

I. Roll Call and Call to Order.

Nancy Corrigan, Chair, called the meeting of the Peer Review Oversight Committee (PROC) to order at 10:00 a.m.

II. Report of the Committee Chair.

A. Approval of June 15, 2012 Minutes.

Nancy Corrigan asked if members had any changes or corrections to the minutes of the June 15, 2012 PROC meeting. No changes were made.

**It was motioned by Seid Sadat, seconded by T. Ki Lam, and unanimously carried by those present to adopt the minutes of the June 15, 2012 PROC meeting.**

B. Report on the July 26, 2012 CBA Meeting.

Ms. Corrigan stated that she was unable to attend the July 26, 2012 CBA meeting. In her absence, Rafael Ixta presented the PROC report based on her notes.

Mr. Ixta stated that the report to the CBA included the PROC's recent oversight activities, an explanation of the process used to select the PROC's Vice Chair, an overview of the National Association of State Boards of Accountancy's (NASBA) Compliance Assurance Committee's (CAC) presentation to the PROC, the NASBA Quick Polls requested by the PROC, the revised roles and responsibilities of the PROC, and the PROC's discussion concerning posting peer review information on the CBA website.

As a result of the PROC report, CBA members directed the PROC to refrain from discussing policy issues unless directed by the CBA. Should the PROC identify an issue that requires policy discussion, it should be brought to the CBA for consideration and assignment. The CBA members stated that the scope of the PROC is monitoring and providing oversight of the peer review process.

Mr. Ixta explained that as a result of the CBA's direction, the following items were removed from the PROC agenda: NASBA Quick Poll results, Discussion Regarding Posting of Peer Review Information on the CBA Website, Discussion Regarding Title 16, California Code of Regulations, Section 40 Concerning Peer Review Due Dates, and Discussion Regarding Record Retention, which was previously assigned to the Committee on Professional Conduct.

Ms. Corrigan appreciated the CBA's feedback concerning the scope of the PROC. She added that it sounds like the CBA does not mind the PROC making suggestions, but doesn't want time spent on issues until they are officially assigned. Mr. Ixta suggested members listen to the segment of the July 26, 2012, CBA meeting where members discussed the role of the PROC. Ms. Corrigan directed Mr. Ixta to provide members with the specific information needed for them to view the meeting webcast.

C. Appointment of PROC Vice Chair.

Ms. Corrigan announced that Robert Lee was appointed as the PROC's Vice Chair. She also stated that Sherry McCoy is second in line. Ms. Corrigan reminded members that she will select 2-3 Vice Chairs, serving consecutive one year terms, after which she will make a recommendation to appoint one of the Vice Chairs to the Chair position.

III. Report on PROC Activities.

A. Report on the July 24, 2012 CalCPA Report Acceptance Body (RAB) Meeting.

Ms. McCoy stated that she went to CalCPA's Glendale office to review the materials prior to the teleconference. She added that due to the number of firms going through peer review, the number of RAB meetings have increased. She stated that a lot of firms are going through peer review for the first time and that both firms and peer reviewers are learning a lot.

B. Report on the August 8, 2012 American Institute of Certified Public Accountants' (AICPA) Peer Review Board Meeting.

Mr. Sadat stated that this was his third attendance at an AICPA Peer Review Board meeting and it was very informative. The discussion focused on the automation of the Matters for Future Consideration (MFCs). He stated the topic created a lot of robust discussion.

Linda McCrone added that there was additional discussion regarding firms that are not online. It was decided that the Peer Review Team Captain will enter the information into the computer, then print the documents needed for the firm to sign.

C. Assignment of Future PROC Activities.

Ms. Corrigan made/confirmed the following assignments:

- October 11, 2012 AICPA PRB Meeting – Gary Bong & T. Ki Lam
- November 15-16, 2012 CalCPA PRC Meeting – Katherine Allanson & Robert Lee
- December 11, 2012 CalCPA RAB Meeting – T. Ki Lam

IV. Reports and Status of Peer Review Program.

A. Updates on Peer Review Reporting Forms Received, Correspondence to Licensees, Verification of Peer Review Reporting Forms, and Citations Issued to Licensees that Failed to Respond to CBA.

April Freeman reported that as of July 12, 2012, over 43,000 peer review reporting forms have been submitted to the CBA. The reporting forms are categorized as follows:

| License Ending In | Reporting Deadline | Peer Review Required | Peer Review Not Required | Not Applicable (Non-firms) | Total |
|---|---|---|---|---|---|
| 01-33 | 7/1/11 | 2,366 | 4,236 | 15,522 | 22,124 |
| 34-66 | 7/1/12 | 1,277 | 3,280 | 11,015 | 15,572 |
| 67-00 | 7/1/13 | 485 | 1,608 | 6,140 | 8,233 |
| | | 4,128 | 9,124 | 32,677 | 45,929 |

PROC members requested that the number of responses pending from each group of licensees be added to the statistics. Mr. Ixta added that the way peer review statistics are reported to the CBA will be modified. Future reports will be broken down by phase and include the number of letters sent, citations issued, failed reports, etc. Those statistics will be included in the CBA meeting materials which are available on the CBA website.

Ms. Freeman advised members that approximately 20,954 peer review notification letters were mailed to the third group of licensees in late June 2012. These licensees are due to submit a Peer Review Reporting Form by July 1, 2013.

She added that staff are preparing to mail approximately 4,200 deficiency letters to licensees that were required to submit a Peer Review Reporting Form by July 1, 2012, but have not yet submitted the required form.

Ms. Freeman advised members that staff began reviewing the Peer Review Reporting Forms of Certified Public Accountants that reported they are operating as a sole proprietor but not subject to peer review. To date, staff has reviewed almost 400 reporting forms.

Based on information obtained from the licensees' renewal forms, 91 licensees have been referred to Enforcement. These licensees are being asked to provide the CBA with a description of their highest level attestation engagement, and copies of their timesheets and billing invoices issued for a specific period of time. Mr. Ixta added that the CBA specifically directed staff to request billing invoices.

Ms. Freeman reminded members that 872 citations were issued in February 2012 to licensees who did not respond to the CBA's letters regarding peer review. She gave a status of the citations, including that 489 have been closed. She also explained that licensees that have not complied with the citation will not be able to renew their license until the administrative fine is paid.

B. Status of PROC Roles and Responsibilities Activity Tracking.

Ms. Freeman stated that the chart has been updated to capture recently attended activities and upcoming events.

C. Status and Summary of Failed Peer Reviews.

Ms. Freeman asked if members had any questions regarding the information on failed peer reviews. No questions were raised.

V. Report of the Enforcement Chief.

A. Discussion Regarding Transportation Options for Traveling to PROC Meetings.

Mr. Ixta stated that although PROC members were provided with Deanne Pearce's June 20, 2012 memorandum regarding Economic Modes of Ground Transportation, he wanted to give them the opportunity to ask questions. He reminded members that they are supposed to use the least expensive mode of transportation to attend meetings, including using a rental car if their travel exceeds 60 miles round trip. Members were reminded that they should not accept any insurance on a rental car, return the car with an empty gas tank, or purchase a refueling package. Members were advised that gas is reimbursable with a receipt.

Mr. Ixta stated that the guidelines are set by the Department of Consumer Affairs (DCA); not the CBA. He also reminded members that all travel claims are reviewed by DCA.

B. Development of the 2012 Annual Report to CBA.

Mr. Ixta reminded members that the PROC approved the Table of Contents for the 2012 Annual Report at its June PROC meeting. Also at that meeting, members requested a copy of the 2011 Annual Report so they could begin making updates.

Mr. Ixta stated that the report will be presented to the CBA at its March 2013 meeting, which means the report needs to be finalized at the PROC's February meeting. He also asked that members decide whether they want a stand-alone report every year, or provide addendums to the current report and only prepare a new report every two to

three years. PROC members agreed that the CBA members would probably prefer a fresh report each year.

The PROC went through the 2011 report section by section and made updates. Staff was directed to bring an underline/strikeout draft of the 2012 report to the October PROC meeting.

Members discussed and agreed that the 2012 report should include policy issues that were raised and discussed throughout the year. Ms. Corrigan confirmed that the CBA could then choose whether or not to assign the issue to the appropriate committee.

C. Approval of Letter to the NASBA CAC Regarding Oversight of the National Peer Review Committee (NPRC).

Mr. Ixta stated that staff prepared a draft letter to the NASBA CAC regarding oversight of the NPRC. He summarized the letter and stated that he emailed the draft letter to Janice Gray for her to share at meetings with the CAC and the AICPA Peer Review Board Oversight Task Force. He did not know the results of those meetings.

Gary Bong inquired as to why the PROC is asking for the information and not just telling them we need it. Mr. Ixta explained that the PROC has two options for overseeing the NPRC: (1) provide direct oversight, or (2) monitor the CAC's oversight. He further pointed out that the letter is directed to NASBA, not the NPRC. Mr. Bong suggested the letter be sent directly to the NPRC and expressed concern that all firms be held to the same standard.

Ms. Corrigan reminded members that the PROC has not yet made a final decision on how to oversight the NPRC. Katherine Allanson believes the PROC is being sensitive to the NPRC since it is subject to oversight from all 50 states. Mr. Lee added that the PROC is trying to get the CAC's information in order to determine if the PROC needs to provide additional oversight.

**It was motioned by Robert Lee, seconded by Katherine Allanson, and unanimously carried by those present to finalize the draft letter to the NASBA CAC as presented.**

VI. Future Meeting Dates and Agenda Items.

Ms. Corrigan asked members for feedback regarding the number of PROC meetings needed for 2013. Members agreed that four meetings would be sufficient, even if the meetings were longer.

The proposed PROC meeting dates for 2013 are:

February 22, 2013
June 21, 2013
August 23, 2013
November 1, 2013

**It was motioned by Seid Sadat, seconded by T. Ki Lam, and unanimously carried by those present to accept the proposed PROC meeting dates for 2013.**

Mr. Bong requested information on the possibility of attending meeting via teleconference. Staff will research options.

VII. Public Comment for Items Not on the Agenda.

None

VIII. Adjournment.

There being no further business, the meeting was adjourned at 12:17 p.m.

Nancy J. Corrigan, Chair

April Freeman, Peer Review Analyst, prepared the PROC meeting minutes. If you have any questions, please call (916) 561-1720.

CALIFORNIA BOARD OF ACCOUNTANCY

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**CBA Item XIII.A-C.**
November 15-16, 2012

# Officer Elections

**Presented by:** Marshal Oldman, Esq., President
**Date:** October 18, 2012

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## Purpose of the Item
The purpose of this agenda item is to present the statement of qualifications submitted by members for consideration for Officer Elections at the California Board of Accountancy (CBA) November 2012 meeting.

## Action Needed
It is requested that CBA members consider all applicant's statements, including any additional candidates presented at the CBA meeting.

## Background
The statements of qualifications are distributed at the November CBA meeting. The President shall ask if there are any additional candidates for the officer positions. All candidates may be given up to five minutes of floor time to describe why they are qualified for the position. The vote for officers shall be taken by a simple hand vote. The President, Vice-President, and Secretary-Treasurer serve one-year terms and may not serve more than two consecutive one-year terms. The newly elected President, Vice-President, and Secretary-Treasurer shall assume the duties of their respective offices at the conclusion of the November meeting at which they were elected.

## Comments
The following members have submitted statements of qualifications:

- Leslie J. LaManna, CPA – President
- Michael M. Savoy, CPA – Vice President
- K.T. Leung, CPA – Secretary/Treasurer

## Fiscal/Economic Impact
This item does not have a fiscal/economic impact.

## Recommendation
None.

## Attachments
1. Statement of qualifications for Leslie J. LaManna, CPA.
2. Statement of qualifications for Michael M. Savoy CPA.
3. Statement of qualifications for K.T. Leung, CPA.

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**CBA Item XIV.C.**
November 15-16, 2012

# Press Release Focus

**Presented by:** Deanne Pearce, Assistant Executive Officer
**Date:** November 1, 2012

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## Purpose of the Item
The purpose of this agenda item is to provide suggestions for an appropriate focus for the press release to be issued following each CBA meeting. This is a dynamic analysis based on the activities of each CBA meeting.

## Action(s) Needed
No specific action is required on this agenda item.

## Background
There have been 10 press releases since the September 2012 CBA meeting; one post-meeting release and nine enforcement action releases. In addition, a press advisory notifying the media of the November meeting is scheduled to be sent out November 13, 2012.

## Comments
None.

## Fiscal/Economic Impact Considerations
None.

## Recommendation
Staff recommendation will be made at the time of this presentation.

## Attachments
1. Post- CBA Meeting News Release
2. Enforcement Action News Releases

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**Attachment 1**

# NEWS RELEASE

FOR IMMEDIATE RELEASE

CONTACT: LAUREN HERSH
(916) 561-1789

## CALIFORNIA BOARD OF ACCOUNTANCY REVIEWS ACCOMPLISHMENTS, SETS COURSE FOR FUTURE

SACRAMENTO – Enhancing consumer protection, sponsoring legislation that will allow CPAs in good standing to "retire" their licenses, and reducing renewal fees during a tough economy are among some of the activities and the accomplishments of the CBA in Fiscal Year 2011-2012.

The accomplishments were part of the Annual Report presented to and approved by the CBA at it's meeting on September 20-21, 2012 in Irvine. The Annual Report is available to the public at http://www.dca.ca.gov/cba/publications/annual_rpt_2012.pdf.

The CBA also voted to adopt a new strategic plan for 2013 – 2015. This Strategic Plan identifies seven goals and 28 objectives developed to enable the CBA to meet its mandates identified in the Accountancy Act (California Business and Professions Code, Section 5000 et.seq.) and CBA Regulations (California Code of Regulations, Title 16, Division 1), as well as the policy directions of CBA Board members.

The 2013-2015 Strategic Plan, which will be implemented over the three year period, is also available on the CBA website at http://www.dca.ca.gov/cba/publications/stratpln2013-2015.pdf. Both the Annual Report and the Strategic Plan are also available by mail upon request.

New objectives in the 2013-2015 Strategic Plan involve major changes that are coming to the accounting profession in California. Among them are:

- The implementation of a new practice privilege program as provided for by SB 1405, California's new "mobility law."
- The implementation of a new military inactive status for California CPAs who are on active duty in the armed forces or National Guard.
- The implementation of the new educational requirements for CPA licensure beginning January 1, 2014, which include 30 units of education in the areas of accounting and ethics study, as well as address any transition issues.

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*Created by statute in 1901, the CBA's mandate requires that protection of the public shall be its highest priority in exercising licensing, regulatory, and disciplinary functions. The CBA currently regulates more than 84,000 licensees, the largest group of licensed accounting professionals in the nation, including individuals, partnerships, and corporations.*

*For immediate news updates via email, subscribe to CBA's E-News at https://www.cba.ca.gov/forms/enews.*
*More information about the California Board of Accountancy is available at www.cba.ca.gov*

**California Board of Accountancy**
**Enforcement Action News Release**

**Attachment 2**

**Sent to business@latimes.com (Los Angeles Times) on October 29, 2012**

**David Deuk-Kwon Kim, Los Angeles, CA (CPA 56598); Arnold Charles Libman, Sierra Madre, CA (CPA 18769); Linda Jean Wilson, Marina del Rey, CA (CPA 35978)** have been disciplined by the California Board of Accountancy. Please utilize the attached links to the California Board of Accountancy's Web page to access details of these enforcement actions. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding these enforcement actions.

http://www.dca.ca.gov/cba/discipline/decisions/index_k.shtml#738
http://www.dca.ca.gov/cba/discipline/decisions/index_l.shtml#761
http://www.dca.ca.gov/cba/discipline/decisions/index_w.shtml#671

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**Sent to business@ocregister.com (Orange County Register) on October 29, 2012**

**Richard Gensley Boyer, Costa Mesa, CA (CPA 17438) and Robert Michael Passero, Seal Beach, CA (CPA 16608)** have been disciplined by the California Board of Accountancy. Please utilize the attached links to the California Board of Accountancy's Web page to access details of these enforcement actions. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding these enforcement actions.

http://www.dca.ca.gov/cba/discipline/decisions/index_b.shtml#780

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**Sent to Biznews@sbtinfo.com (South Bend Tribune) on October 29, 2012**

**Drew Wesley Evans, South Bend, IN (CPA 92055)** has been disciplined by the California Board of Accountancy. Please utilize the attached link to the California Board of Accountancy's Web page to access details of this enforcement action. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding this enforcement action.

http://www.dca.ca.gov/cba/discipline/decisions/index_e.shtml#930

**California Board of Accountancy**
**Enforcement Action News Release**

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**Sent to diana.mccabe@utsandiego.com (San Diego Tribune) and don.bauder@mac.com (San Diego Leader) on October 29, 2012**

**Ronald Klingensmith, Escondido, CA (CPA 50448) and K2 Certified Public Accountants (FNP 2061)** have been disciplined by the California Board of Accountancy. Please utilize the attached links to the California Board of Accountancy's Web page to access details of these enforcement actions. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding these enforcement actions.

http://www.dca.ca.gov/cba/discipline/decisions/index_k.shtml#661
http://www.dca.ca.gov/cba/discipline/decisions/index_k.shtml#976

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**Sent to mlimon@sltrib.com (Salt Lake Tribune) on October 29, 2012**

**Jennifer Nakao, Murray, UT (CPA 82141)** has been disciplined by the California Board of Accountancy. Please utilize the attached link to the California Board of Accountancy's Web page to access details of this enforcement action. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding this enforcement action.

http://www.dca.ca.gov/cba/discipline/decisions/index_n.shtml#755

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**Sent to cdebenedetti@bayareanewsgroup.com (Oakland Tribune) on October 29, 2012**

**Edward A. Robinson, Fremont, CA (CPA 23322)** has been disciplined by the California Board of Accountancy. Please utilize the attached link to the California Board of Accountancy's Web page to access details of this enforcement action. Please contact Patti Bowers, Executive Officer, by telephone at (916) 561-1718 or by e-mail at pbowers@cba.ca.gov should you have any questions regarding this enforcement action.

http://www.dca.ca.gov/cba/discipline/decisions/index_r.shtml#814