

Nominations for Vice Chair

State Boards have been notified that they have until the end of February to submit their nominations for NASBA Vice Chair 2009-10. Under Article IV, Section 3 of NASBA's Bylaws, to be eligible to serve as Vice Chair, an individual must have served as a Director-at-Large or Regional Director for at least a year, but need not be a current member of the NASBA Board at the time of his or her election. The candidate who is elected NASBA's Vice Chair 2009-10 at the 2009 NASBA Annual Business Meeting will accede to the office of Chair 2010-2011.

State accountancy boards are asked to send their recommendations, along with a current resume for each individual nominated to Nominating Committee Chair Samuel Cotterell at NASBA, 150 Fourth Avenue North – Suite 700, Nashville, TN 37219-2417. Nominations can be faxed to (615)880-4291 or emailed to aholt@nasba.org. Questions should be directed to Anita Holt at (615)880-4202.

The Boards are also being asked for nominations for candidates for the 2009-2010

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NASBA Board Discusses 120/150 Draft

The NASBA Board's January 16 meeting included a spirited discussion of the 120/150 hour education draft paper on NASBA's Web site. While Board members held varying views on whether or not candidates should be permitted to take the Uniform CPA Examination upon completing 120 hours of education, or if 150 hours should be required for taking the examination as well as for licensure, following their discussion, the Board concurred with the Web site posting of the discussion draft for the purposes of eliciting consideration of the topic. NASBA's Education Committee will be reviewing the draft and the written responses, which have also been posted on the NASBA site.

"Our position was not to support or oppose either alternative," President David Costello stated. "We were very careful in indicating that this was a 'discussion draft,' so that no one would get the idea it was a formal position. It was a discussion motivator. I think the Education Committee can help to guide us to what needs to be done next."

At the January meeting, Committee on Relations with Member Boards Chair E. Kent Smoll reported the Regional Directors have set several goals for this year:

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Parmalat Judge Denies DTT Summary Judgment

Despite the assertions of Deloitte Touche Tohmatsu, US District Judge Lewis A. Kaplan of New York refused to agree that Deloitte & Touche, S.p.A. ("Deloitte Italy") was not part of a principal-agent relationship with Deloitte Touche Tohmatsu (DTT). Deloitte Italy was indicted by Italian officials after Parmalat went bankrupt in December 2003, and it was found that the company's executives had overstated its assets by \$16 billion. Allegedly, the Deloitte Italy auditors ignored signs of the fraud and certified the financial statements. The current case is being brought by a class of individuals who purchased ordinary Parmalat shares and bonds and who are now seeking damages against Parmalat's accountants, banks and others. DTT asked for summary judgment dismissing the complaint on the ground that DTT and its chief executive officer James Copeland are not vicariously liable. In this case, it did not dispute that Deloitte Italy itself is primarily liable.

Judge Kaplan denied the Deloitte defendants' motion for summary judgment [94 Civ.0030 docket item 984; 04 MD 1653 docket item 1586] on January 27. In his memorandum opinion he stated: "Although disclaimers on DTT's website assert the legal separateness of DTT and its members, DTT's goal, as expressed by its chief executive officer, James Copeland, was for clients to 'get consistent seamless service across national boundaries.' Member firms therefore use the Deloitte name when serving international clients 'in order to project the image of a cohesive international organization.'"

DTT argued that the U.S. Supreme Court's decision in *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.* (see *sbr* 2/08) foreclosed common law theories

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NASBA Amicus Brief Aids NE Board

The Nebraska Board of Public Accountancy's action in the case of Michael P. Walsh was upheld in the Nebraska District Court in a decision filed on January 9, 2009 (Case No. S-07-001083). Plaintiff-Appellant Walsh contended that he was entitled to use the CPA title in performance of tax return preparation services even though he no longer held an active registration with the Board. The Board had issued a cease and desist notice to Mr. Walsh when he listed himself as a CPA in an Omaha-area telephone directory. In addition, the Board had received a letter from Mr. Walsh's brother-in-law, who had been impersonated by Mr. Walsh on the telephone to obtain financial information from an insurance company. The Board found Mr. Walsh to have committed a discreditable act for that impersonation. He was reprimanded and placed on probation for three years with the condition he cease using CPA within 30

days on his written materials provided to the public, unless CPA was also accompanied with the disclaimer "inactive registrant."

NASBA filed an *amicus curiae* brief in support of the Board's action. "The heart of NASBA's concern is that the title 'CPA' communicates more than historical accomplishments. The statutory title 'CPA' says that the individual is currently authorized to use the title and complies with all applicable requirements including continuing education and adherence to professional standards and codes of conduct."

The appeals court affirmed the district court's judgment. They stated: "We find no errors in the record reviewed by the district court. The court's decision affirming the order of the Board conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable." ♦

NASBA Board Discusses 120/150 Draft

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1. Continue to urge the boards to fully participate in the Accountancy Licensee Database;
2. Support the passage and implementation of mobility legislation in all jurisdictions; and
3. Promote the initiatives of NASBA's new Enforcement Practices Committee.

Mr. Smoll noted the Regional Directors are concerned about how the lagging economy is impacting the operations of the state boards and the effect it may have on attendance at NASBA

meetings. He was told there will be scholarships.

Senior Vice President Ken Bishop told the Board that 31 states have passed mobility legislation and 16 have mobility language written for introduction in 2009. Forty-eight jurisdictions now have either passed mobility provisions as described in the Uniform Accountancy Act's Section 23, or introduced such bills, or their board has voted in favor of such legislation. Chief Operating Officer Joe Cote reported that 18 states are fully participating in the Accountancy Licensee Database and nine more have agreed to have their information added. ♦

Parmalat Judge Denies Summary Judgment

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of secondary liability for Exchange Act claims. Judge Kaplan concluded that decision did not deal with the question presented in this case: "whether a principal is liable vicariously for an Exchange Act violation committed by its agent acting within the agent's scope of employment."

The judge concluded that DTT exercised substantial control over the manner in which its member firms conducted their professional activities, controlled the acceptance and rejection of engagements by member firms and required use of the company's name, and played a substantial role in the legal and risk management affairs of its member firms. He pointed out, "DTT's Professional Practice Manual states that 'differences of opinion between Member Firms...should be resolved' by referring matters 'to the Chairman and Chief Executive for resolution.' Moreover, there is evidence that DTT exercised that authority in the specific context of the Parmalat engagement."

So the case continues.... ♦

Nominations for NASBA Vice Chair

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NASBA Board of Directors and for the NASBA Nominating Committee. Nominating Committee recommendations should be sent to Mr. Cotterell by Friday, May 16, and for Regional Directors and Directors-at-Large by Friday, May 23. State Boards in the Great Lakes, Mountain, Northeast and Southwest Regions are being asked for nominations for their Region's member and alternate to serve on the Nominating Committee for two years. Elections for these positions will be held during the June 2009 Regional Meetings. All of the member boards are being asked for nominations for the Board of Directors, with the Nominating Committee selecting a slate of officers on June 19, and the election of officers taking place at the Annual Business Meeting on November 3 in Scottsdale, AZ. ♦

Standing Together to Stand Alone

This month our country is celebrating the 200th anniversary of the birth of an extraordinary man, Abraham Lincoln. Besides having vision, leadership strength and verbal acumen, he possessed a sense of humor. For example, when he and his diminutive wife were presented to an audience, he would frequently quip, "Well here is the long and the short of it."

The long and the short of it for this month's memo is: States suffering from the recession are looking for ways to trim their budgets, with boards of accountancy seen as likely places to make cuts. And the short of it is NASBA is here to support the state boards. We have seen governors propose drastic measures in California, Connecticut and Washington, to just name a few states. NASBA is ready to assist the boards with letters, testimonies and scholarships.



Costello

What follows are excerpts from the letter we sent to Washington Governor Christine Gregoire on January 20. We wrote in support of allowing the Washington State Board of Accountancy to remain a stand-alone agency reporting directly to the Governor.

"A principal best practice among boards of accountancy is the stand-alone, non-consolidated organizational structure. This non-centralized approach to regulating CPAs and other licensees is the most efficient, most effective, and most sensitive to the public interest.

"Decades ago, professional boards had little regulatory authority and were strictly license-issuing agencies. From the 1920s to the 1970s, many states consolidated the professional boards along with many other licensing entities because, at that time, there was no perceived difference between issuing a professional license and a fishing license. However, the complexities of financial reporting and the opinion of licensed auditors on the presentation of financial statements have largely contributed to the public's expectation that accountancy regulatory boards are involved not only in licensing of CPAs, but also their competency, professional conduct, and quality of service. It is NASBA's opinion that accountancy boards which are stand-alone agencies meet the public's expectations and needs in a more responsive, quality and professional manner. Currently, there are 23 consolidated, centralized boards. The other 32 accountancy boards are stand-alone, more autonomous, and more financially independent.

"In a landmark report (Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury) dated October 6, 2008, the Department of the Treasury's Advisory Committee On The Auditing Profession made the following recommendation and comments:

'Urge the states to create greater financial and operational independence of their state boards of accountancy.

The Committee is concerned about the financial and operational independence of state boards of accountancy from outside influences, such as other state agencies, and the possible effect on the regulation and oversight of the accounting profession. A number of state boards are under-funded and lack the wherewithal to incur the cost of investigations leading to enforcement. In addition, some state boards fall under the centralized administrative "umbrella" of other state agencies and lack control of financial resources and/or operational independence necessary to carry out their mandate of public protection.'

"It should be kept in mind that the above recommendation and comments were made after months of testimony, deliberation, and debate by accounting, insurance, and financial professionals and leaders from industry, government and academia.

"State boards separately funded and structured (non-consolidated) have led in responding to major national financial failures within their respective states. It was the Texas State Board of Accountancy which acted quickly and effectively to terminate the practice rights of the auditor of Enron. Other separately-structured boards have conducted themselves in similar fashion responding to the public's expectations and continuing to build confidence in regulation that protects the public interest without being mired in needless red tape.

"In our states and in our country, we are experiencing a crisis of confidence in government and its regulators. With the financial meltdown, the bailouts, and a myriad of confusing 'solutions,' the public is incensed about the keepers of the trust and the watchdogs over the processes intended to guard against the disasters we've all witnessed and been a part of. I would respectfully submit that this is not the time to lessen the strength and effectiveness of your State Board of Accountancy."

The long and the short of it is: We stand together to promote the state boards functioning as stand-alone agencies.

Ad astra, Per aspera



— David A. Costello, CPA
President and CEO

CPAES Tailors Florida Grade Delivery

Charles W. Drago, secretary of Florida's Department of Business and Professional Regulation reported to the state's Senate Committee on Regulated Industries, on January 14, that his agency had reduced the time required to process exam scores for CPAs from three months to as little as two weeks. They were able to speed up distributing scores to CPA candidates thanks to a change in the way the Florida Board of Accountancy opted to receive scores from NASBA's CPA Examination Services (CPAES).

CPAES Director Patricia Hartman explained that state boards have the ability to select among options for score delivery. Boards can opt to receive individual exam section scores as soon as they are received, once at the end of each wave of score release, or they may have the scores for sections taken during one testing window

bundled together and sent at the end of each window. CPAES can transmit scores securely either electronically or via hard copy. On average, scores can be transmitted to states twice in a three-month exam window, or as frequently as eight times per window. Florida has now decided to receive test results eight times per window, which will allow it to provide licensure packages in approximately 30 days to those who pass.

Secretary Drago told the Florida Senate Committee, "This change will help Floridians get to work faster, and Certified Public Accountants can now enjoy a faster path to their careers." Prior to the switch, his department had identified the CPA licensing process as one of the lengthiest for applicants, taking as much as three months in some cases. ♦

NASBA Expands Services

NASBA has added a new line of business, Management and Administrative Services, President David Costello announced at the January Board meeting. President of the new business unit is Denise Hanley, who had previously served as NASBA's Chief Information Officer.

In announcing Ms. Hanley's new post, President Costello explained: "Denise will launch a line of business that will enable NASBA to manage some or all functions for associations, small businesses and other organizations. She has done a fine job initiating technical services over the years at NASBA, and we are excited about her leading us into this new venture successfully."

President Costello also announced some additional organizational changes. Thomas Kenny, NASBA

Communications Director, has been charged with developing a Meetings Division to serve external customers in the areas of travel and meeting planning.

President Costello stated: "For years NASBA has been a leader at planning, organizing and hosting outstanding meetings for state board members, committees, clients and others. In fact, we have requests to manage travel and meetings for other groups. With the economy bearing down on many organizations, including associations and small business, we believe it is of strategic importance for NASBA to launch this new business."

NASBA's Information Technology Department and Information Systems Department will be merged into one organization led by Chief Technology Officer Ed Barnicott. ♦

State Board Report

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