

# NASBA State Board Report

A Digest of Current Developments Affecting State Accountancy Regulation

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## PCAOB Bill Introduced

Legislation that would open to the public the Public Company Accounting Oversight Board's disciplinary hearings of accountants and accounting firms was introduced on November 18, 2011 by Senators Chuck Grassley (R-Iowa) and Jack Reed (D-RI), S.1907 the "PCAOB Enforcement Transparency Act of 2011." This would modify the Sarbanes-Oxley Act of 2002 that now requires the PCAOB's disciplinary proceedings to be kept confidential through charging, hearings, initial decision and appeal. However, the Securities and Exchange Commission's Rules of Practice make open to the public hearings and related notices, orders and motions.

"Sunshine is the best disinfectant," Senator Grassley stated. "This legislation levels the playing field between auditors reviewed by the SEC and auditors reviewed by the PCAOB. Currently, PCAOB proceedings are secret while SEC proceedings are not. The secrecy provides incentives to bad actors to extend the proceedings as long as possible so they can continue to do business without notice to businesses about potential problems with a particular auditor. This bill ends the secrecy and brings the kind of transparency that adds accountability to agency

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## Dustin Picked as a NASBA VP - Board Relations



Daniel J. Dustin, CPA

Daniel J. Dustin, CPA, will become NASBA's Vice President of State Board Relations on January 1, 2012. Currently he is the executive secretary of the New York State Board for Accountancy and was the 2010 recipient of NASBA's Lorraine P. Sachs Standard of Excellence Award. He has taken an active role in many of NASBA's committees, including the CPA Examination and Administration Committee, Accountancy Licensee Database Task Force and Executive Directors Committee.

Incoming NASBA President and CEO Ken L. Bishop explained that Mr. Dustin in this new position will be an advocate for the State Boards. He said, "Dan will be a great addition to the NASBA team and has the exact qualities and attributes to fulfill this new position which will ensure enhanced advocacy for State Boards." In his work with the New York Board, Mr. Dustin developed and drafted proposed legislation and amendments to the state's accountancy rules and regulations.

NASBA President and CEO David A. Costello, CPA, said that Mr. Dustin's abilities would complement NASBA's executive staff: "His extensive knowledge and experience in government, and particularly in Accountancy Board matters, will help NASBA meet more comprehensively its principal mandate to help Boards be more effective."

Colleen Conrad, CPA, will become NASBA's Executive Vice President and COO on January 1, 2012. ♦

## EC Adopts Proposal for a Single Audit Market

The European Commission on November 30 adopted proposals that would: mandate the rotation of audit firms after a maximum of six years, prohibit audit firms from providing non-audit services to their audit clients, and create a single market for statutory audit services by introducing a European passport for the audit profession. These measures still have to be approved by the European Union's member states and the European Parliament, and that could take up to 18 months. Other key elements of the proposals include: public entities will be required to have an open and transparent tender procedure when selecting a new auditor; coordination of auditor supervision activities within the framework of the European Markets and Securities Authority; and proportionate application of standards in the case of small and medium-sized companies.

These proposals are based on responses to the EC's Green Paper that was launched in October 2010 and elicited 700 responses from a wide group of stakeholders. In September 2011 the European Parliament supported the Commission's main proposals. The executive summary assessing the impact of the changes states: "The United States is also considering important changes particularly in the domain of the independence of auditors. Serious consideration is being given to the mandatory rotation of audit firms to address what are perceived as serious shortcomings."

Responding to the EC's proposal, Grant Thornton released a statement that

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## CPT /Baruch Conference Debates Bill

Kicking off Baruch College's Sixth Annual Auditing Conference, co-sponsored by the NASBA Center for the Public Trust, NASBA President David Costello stated: "Behind the numbers is the trust." Moderator Douglas Carmichael, Baruch College Professor and former Public Company Accounting Oversight Board (PCAOB) Chief Auditor, reminded the audience that December 2, 2011 would mark the tenth anniversary of the Enron bankruptcy filing, and pointed out how fitting this conference was to have a strong regulatory focus on December 1, 2011.

Panelists discussed Senate bill S.1907 (see article on page 1), which would give the PCAOB's investigative proceedings the same transparency as the SEC's have. Deloitte Deputy General Counsel Howard A. Smith argued that the right basis for the SEC's action is not the same as for the PCAOB's because the PCAOB is "more narrowly focused." In response, Claudius B. Modesti, PCAOB Director of Enforcement and Investigations, said he regularly tells his staff, "We're here to be fair and just." He explained that the enforcement divisions of the PCAOB and of the Securities and Exchange Commission coordinate their activities to avoid duplicating efforts. "We share information and the SEC makes its own decision whether or not to take up a parallel case," Mr. Modesti stated. "Someone is looking out for the investor – either the SEC or the PCAOB."

The PCAOB's proposal to have the engagement partner named in the audit report (see *sbr* 11/11) was also debated by the panelists. Mr. Smith said this would heighten the risk of liability exposure for the individual, but Alison Conn, Assistant Director of the SEC Enforcement Division, said the Commission would, "Always be digging down to see who is responsible." She stated, "The fact that someone was not named on a document would not change their responsibility for us."

There has been an uptick in people changing documents before the PCAOB's firm inspections, Mr. Modesti said. He questioned why anyone would do something like that when they balance receiving a comment of having violated a PCAOB audit standard against having charges brought against them for changing the document. The Enforcement Division has been taking action against these individuals (see *sbr* 8/11).

Each year the PCAOB conducts approximately 200 firm inspections, reported Helen A. Munter, Director of the PCAOB

Division of Registration and Inspections. The most commonly identified deficiencies found during those inspections are: failure to obtain a sufficient understanding of the flow of transactions and selecting controls to test; need to evaluate whether controls selected for testing operated at the level of precision necessary to prevent or detect the risk of material misstatement; and need to evaluate the effects of known control deficiencies. Professor Carmichael asked why the level of deficiencies continues to occur. Ms. Munter said the PCAOB is drafting a report, trying to identify the root causes. She noted that 40 percent of the firms inspected receive clean inspection reports. ♦

### TX Board Routs Out Unlicensed

As of the beginning of December, the Texas State Board of Public Accountancy had issued 16 cease and desist orders against foreign audit firms performing unlicensed audits for Texas-based, SEC-registered companies. In addition, it has issued seven cease and desist orders to domestic U.S. firms that were providing unlicensed audits. The Board is also sending correspondence regarding this matter to foreign firm's headquarters as well as the appropriate foreign accounting regulatory bodies. "The Texas Board stands ready to assist other Boards in determining if there is foreign auditor activity in their states," Texas Board Executive Director William Treacy said.

As of October 25, 2011, the Public Company Accounting Oversight Board is informing its new registrants: "You should also be aware that registration with the PCAOB does not supplant the licensing requirements that apply in any State or competent jurisdiction in which your firm engages in the practice of accounting or auditing. We encourage you to consult with the appropriate regulator in each such State or jurisdiction to insure that your firm is operating in accordance with applicable law."

The AICPA/NASBA Uniform Accountancy Act Committee is studying the issue of non-US auditors practicing in the US without obtaining the appropriate license. ♦

## PCAOB Transparency Bill Introduced (Continued from page 1)

proceedings."

The Reed-Grassley bill would amend Section 105(c)(2) and Section 105(d)(1)(C) of the Sarbanes-Oxley Act. These changes were requested in a letter from PCAOB Member Daniel Goelzer, then PCAOB Acting Chairman, in August 2010 to leaders of the Senate Banking Committee and the House Financial Services Committee. He had discussed these amendments to SOX when he addressed NASBA's 2010 Annual Meeting. At that time, he cited one firm that while involved in the PCAOB's enforcement process

continued in public practice and filed 29 additional audit reports.

Senator Reed stated: "Investors and companies alike should be aware when auditors and accountants they rely on have been charged or sanctioned for violating professional auditing standards." The senators said the PCAOB's closed proceedings run counter to the public proceedings of not only the SEC, but also the US Department of Labor, the Federal Deposit Insurance Corporation, the US Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, and others. ♦

# President's Memo

## Fresh Starts

An Irishman, Joseph Kirby, a bricklayer whose death was mistakenly noted in the obituary column of the *Hartford Courier* was understandably upset. So the next morning Joseph (the “corpse”) rushes down to see the editor to vehemently protest the error.

“I’m awfully sorry Mr. Kirby,” apologized the editor, “but it’s too late now to do much about it. The best I can do for you is to put you in the ‘Birth Notices’ column tomorrow -- and give you a fresh start.”

Our work, our service, our recreation and life itself are replete with “do-overs,” mulligans, new beginnings, second chances and fresh starts. You perhaps have experienced or observed it with one of your clients or friends--a bad business judgment which later seemed to be mitigated by the lessons learned, as a second chance redeemed the previous misadventure.

As golfers we love the mulligan, that wonderful invention attributed to a fellow named Mulligan who chose not to count a stroke on his first attempt at hitting the golf ball. It’s the ultimate do-over, that on the spot opportunity to quickly correct an errant drive, iron shot or chip (no self-respecting golfer would take a mulligan on the green). Some have accused me of being too creative in the use of mulligans, a charge which of course is groundless.

NASBA’s history is sprinkled with...no, it’s full of successes which represent the do-over, the new beginning, the fresh start. In the late 1990s the concept of “substantial equivalency,” the bedrock of our current mobility provisions throughout the country, was introduced as we together with the AICPA sought to remake and significantly improve the Uniform Accountancy Act. The past three years have seen tremendous progress in mobility legislation in 48 states, a success which began out of a fresh start mindset on the part of the profession, State Boards and NASBA.

A new beginning ushered in a dramatic change in the development, scoring, delivery and administration of the Uniform CPA Examination in 2002. A unique three-party agreement among the AICPA, Prometric and NASBA supported by our Boards and the profession brought the examination into the world of technology, and established the accounting profession and the State Boards as thought leaders for a high stakes professional examination.

We experienced the necessity of make-overs as the Sarbanes-Oxley Act of 2002 and the Public Company Accounting Oversight Board it created reminded public companies that corporate officers and their respective auditors must tell the truth, be more transparent and be more accountable.

NASBA’s Center for the Public Trust was a new beginning to positively display CPAs, CFOs, CEOs and other professionals and company officers who have lived and served by ethics principles so that the public could simply trust again after major financial frauds.

This time of year is filled with resplendent evidence of fresh starts with great joy expressed, songs and music heard everywhere, gifts exchanged and hopeful anticipation of the new year, everyone’s new beginning. And whether it’s Christmas, Hanukkah or other celebrations for you, the joy, peace and hope themes abound and permeate our work places, our worship sites and our homes.

As I am soon to begin my fresh start, my re-firing, I simply want to thank all of you, my readers, for 17 plus wonderful years of new beginnings and do-overs. And let us all in the spirit of the season go boldly, expectantly and positively into our futures where fresh starts are simply approaches to enhancing whatever we’re about and whomever we hope to be. Merry Christmas! Happy Hanukkah! Peace to all!

*Ad astra, Per aspera*



David A. Costello, CPA

A handwritten signature in black ink that reads "David A. Costello". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

— David A. Costello, CPA  
President and CEO

## SEC Continues to Study IFRS

The Securities and Exchange Commission staff will take “a few additional months” to finish its study on International Financial Reporting Standards, SEC Chief Accountant James Kroeker told an AICPA conference on December 5. However, the staff did release two papers in mid-November, “A Comparison of U.S. GAAP and IFRS” and “An Analysis of IFRS in Practice,” both available on [www.sec.gov](http://www.sec.gov).

Using U.S. GAAP as its reference point for the standard comparison study, the SEC staff focused on accounting requirements and compared those requirements to equivalent or corresponding IFRS requirements, as applicable. They omitted from their review any U.S. GAAP requirement and the IFRS equivalents that are subject to ongoing joint standard-setting efforts. The report states, “To date, the Boards have reached substantially (if not fully) converged positions on certain of the ongoing projects (revenue recognition and leases), thereby increasing the probability that IFRS and U.S. GAAP will be converged in these areas in the near-term. However, based on the deliberations and tentative conclusions reached thus far, it is unclear whether the Boards will be able to reach convergence on key aspects of all projects (e.g., on the various elements of the financial instruments project). Further, the Boards’ reprioritization of certain joint projects (e.g., financial instruments with characteristics of equity) makes it unclear whether these projects would be completed in the foreseeable future and, if so, whether substantive progress towards convergence would be made before any Commission consideration of whether to incorporate IFRS into the financial reporting system for U.S. issuers.”

For the paper on practice, the SEC staff analyzed the most recent annual consolidated financial statements of 183 companies which prepare financial statements in accordance with IFRS, about 80 percent of them being domiciled in the European Union. The staff focused on how the recognition and measurement requirements of IFRS were applied in practice. Then they compared their observations for all companies to identify trends on an overall basis as well as by country and industry.

Chief Accountant Kroeker told the AICPA conference, “The boards [Financial Accounting Standards Board and International Accounting Standards Board] are not aligned as it relates to their approaches to consider hedge accounting in the context of their financial instruments project.” He observed, that there are “numerous conceptual, operational and practical questions raised about the proposal to date that I believe should be considered by both boards jointly.” ♦

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## EC Adopts Proposal for a Single Audit Market

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it was “encouraged by the banning of restrictive covenants that artificially limit the choice of auditor, and that proposals for shared audits have been retained in the proposed legislation. We welcome the encouragement for companies to use more than one auditor, but we would like to see the incentives made stronger.”

The ACCA commented, “While welcoming the removal of the mandatory joint audit from the EC’s proposals, ACCA is concerned that the mandatory rotation of audit firms, along with a ban on firms providing non-audit services, could present major implementation challenges to the audit profession and could prove counter-productive.”

The formal titles of the documents are “Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/45/EC on statutory audits of annual accounts and consolidated accounts” and “Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities.”

The European Commission is the driving force in proposing legislation to the European Union’s Parliament. The European Union is an economic and political partnership of 27 European countries which every five years directly elect 736 members to the European Parliament to represent their citizens. ♦

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