

NASBA REGIONAL MEETINGS 2007

WORKING WITH NATIONAL AND INTERNATIONAL REGULATORS

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OVERVIEW OF TOPICS

1. SEC: WORKING WITH THE OFFICE OF THE CHIEF ACCOUNTANT
2. PCAOB: HOW STATE BOARDS SHOULD USE INSPECTION REPORTS.
3. PCAOB INVESTIGATIONS AND ENFORCEMENT: COORDINATION WITH STATE BOARDS
4. INTERNATIONAL REGULATORS: IMPACT ON STATE BOARDS
5. USE OF ENFORCEMENT COMPACTS

1. SEC: WORKING WITH THE OFFICE OF THE CHIEF ACCOUNTANT

- A. Associated Press reports that State Boards are not following up on SEC enforcement actions against public accounting firms and CPAs, thereby not filling their public protection mandate.
- B. NASBA conducted a survey of State Board responses to SEC enforcement referrals. The State Boards generally indicated that they believed they have been appropriately following up on these referrals.
- C. NASBA met with SEC Chief Accountant Conrad W. Hewitt and staff to review the referral process and discuss the adequacy of State Board responses. They expressed general satisfaction with some exceptions.
- D. NASBA's analysis of State Board responses to SEC enforcement referrals through the public records indicates there may be issues to be resolved. The Regulatory Structures and Issues Committee is working on this issue.
- E. We urge State Boards to give a high priority to the SEC referrals in fulfilling their public protection mandate.
- F. NASBA is continuing the analysis of the referral process to develop suggestions or guidelines for State Boards.

2. PCAOB: HOW STATE BOARDS SHOULD USE INSPECTION REPORTS

- A. The inspection program reflects a legislative choice of favoring the correction of quality control problems, rather than exposing them to the public, to improve the quality of audits over time through successive inspections to prevent future audit failures.
- B. When the final Inspection Report is issued, the firm has 12 months to address the quality control comments. This is intended to be a remedial period to allow the firm to take steps to improve its audit processes. It is an essential and integral part of the longer-term audit quality improvement process intended by the SOX Act.
- C. The inspection report is not intended to be a primary enforcement tool, although if serious problems are suspected as a result of the inspection the PCAOB may refer the matter to the Division of Enforcement and Investigations, the SEC or other Federal or State regulators.
- D. State Boards' use of the Firm Inspection Reports is, in most instances, limited to background information for fulfilling their public protection mandate, since the inspections reports are comments only, and therefore cannot be used directly for enforcement.

3. PCAOB INVESTIGATIONS AND ENFORCEMENT: COORDINATION WITH STATE BOARDS

- A. The firm inspection report is the product of the PCAOB Division of Registration and Inspection that is separate and distinct from the work of the Division of Enforcement and Investigation. The inspection reports do not constitute adjudicated findings of fact and, therefore, cannot be used directly for enforcement. Findings of fact are the result of the processes implemented by the Division of Enforcement and Investigations.
- B. In most instances, a State Board's investigation of suspected violations of professional standards will commence with the conclusion of the actions of the Division of Enforcement and Investigations, the SEC or other Federal or state regulatory entities. This is similar to the process that has been in place with the SEC and other Federal regulators for several years.
- C. A working group from NASBA's Legal Affairs Committee and the Regulatory Structures and Issues Committee are currently discussing procedures and protocols for referral of PCAOB enforcement actions to State Boards, similar to that of the SEC.

4. INTERNATIONAL REGULATORS: IMPACT ON STATE BOARDS

- A. The Financial Accounting Standards Board: The FASB has been working with the International Accounting Standards Board to converge the standards of both organizations into one unified set of accounting standards for the past few years.
- B. The SEC has been following a "roadmap" for convergence and recently announced that foreign firms may no longer need to reconcile their financials to U.S. GAAP by 2009.
- C. The SEC is seriously considering allowing all companies listed on U.S. securities markets to use either U.S. GAAP or International Financial Reporting Standards (IFRS).
- D. Impact on State Boards/NASBA:
The movement to IFRS will have a significant influence on the CPA Examination, entry education standards and professional practice standards.
- E. International activities of the PCAOB:
 - 1. The PCAOB has developed a comprehensive process for foreign regulators to conduct PCAOB inspections of foreign firms registered with the PCAOB (780 foreign firms out of a total of over 1,700 total registered firms) to eliminate unnecessary duplication.
 - 2. First International Auditor Regulatory Institute: A forum for discussion about how audit regulators around the world can better protect the

interests of investors and increase efficiency, reliability and transparency in accurate and reliable financial reporting.

3. International Federation of Independent Audit Regulators: PCAOB is considering membership in this organization of Asian countries' regulators to participate in their deliberations on regulatory standards and coordination.

F. Relevant activities of IFAC

1. The Public Interest Oversight Board (PIOB) was established by IFAC as an independent oversight body to enhance the creditability of the independence of their standard setting processes.
2. The PIOB has oversight responsibilities over IFAC's auditing, ethics and education standard setting bodies.
3. The standards promulgated by these three standard-setting bodies receive broad acceptance by many of the professional associations of the 118 countries represented in IFAC's membership (including the AICPA).
4. Most of the government regulators from the 118 countries adopt many of the standards promulgated by the auditing, ethics and education standards established under the PIOB oversight.
5. The professional associations represented in IFAC's membership have an obligation, as a condition of membership, to adopt standards promulgated by the standard-setting bodies to the extent allowed by local laws or do not unduly conflict with economic and regulatory structures and cultural customs.
6. It is important to recognize that IFAC has received significant acceptance and influence as the representative voice of international professional associations by government regulators.
7. NASBA's responsibility:
Given the growing influence of IFAC globally, and the increasing use of their international standards through adoption or as a model by government regulators, NASBA must be involved in the process at the formative stage of international standards development.

5. USE OF ENFORCEMENT COMPACTS

A. Coordination of State Boards: Enforcement Agreement/NASBA

Model distributed at 2006 NASBA Annual Meeting (attached)

STATE ACCOUNTANCY REGULATION ENFORCEMENT AGREEMENT

Compact Ratified. This state hereby ratifies the following compact to become effective at such time as this and another eligible state approve it.

Comment: As is more fully explained below, although this compact is styled as an act of a state legislature, formal statutory enactment is probably not necessary under most states' accountancy acts. Most states as well as the Uniform Accountancy Act have laws already allowing state boards of accountancy to cooperate with other states in the administration and enforcement of accountancy regulations. Thus, many states could approve this compact by state board approval.

Accountancy regulation enforcement cases involving more than one state are becoming more numerous. As states allow greater licensee mobility, the number of disciplinary matters involving more than one jurisdiction will inevitably increase. Transborder cases, where a CPA is physically located in one state but the victim resides in another state, and multistate cases, where the harm directly impacts persons in more than one state, present unique challenges to the state boards involved. Also, transborder cases involving the unauthorized practice of accountancy and the illegal use of the CPA title via the internet may pose enforcement problems. A multistate enforcement compact offers a solution for these complex issues involving state accountancy regulation boards.

Multistate compacts are contracts between states. If adopted by statute they may carry the force and effect of statutory law. They are a tool for state governments to address regional or national policy concerns. Multistate compacts provide states with the means to address state problems with state solutions. As envisioned, a multistate enforcement compact could more efficiently and effectively manage accountancy regulation cases involving transborder and multistate conduct.

The compact also could operate as a conduit/clearing house for referrals from the PCAOB/SEC to appropriate "state regulatory authorities" regarding individual licensees as well as CPA firms as provided in the Sarbanes-Oxley Act. See §104(c)(2) [reporting "any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards"]; §104(g)(1) [providing a "report of the findings of the Board for each inspection"]; §105(b)(4)(B)(iii)(III) [referring investigations]; §105(b)(5)(B)(ii)(IV) [sharing confidential inspection information if "necessary to accomplish the purposes of this Act or to protect investors"]; §105(d)(1)(B) [reporting sanctions].

The existence of a multistate enforcement compact could facilitate enforcement cooperation in areas such as venue issues (convenience, connection, local harm) or substantive legal issues (applicable substantive law, procedural laws, confidentiality, etc.). Other benefits could be choosing the best forum state for state proceedings, assuring public protection even in fiscally challenged states, minimizing overlaps and duplication, reducing inequitable piling on, and avoiding state or federal leveraging by violators and enforcers.

Article I. Purposes

The purposes of this compact are to:

A. Provide close and effective cooperation and assistance in the transborder and multistate enforcement of state accountancy laws and regulations.

B. Provide mutual aid and assistance and provide for the powers, duties, rights, privileges and immunities of state accountancy regulation enforcement personnel when rendering such aid.

Comment: Although the United States Constitution prohibits states from entering into separate agreements or “compacts” without permission from Congress, the Supreme Court has held that states may nevertheless make agreements among themselves without Congressional approval so long as the agreements pertain to the enforcement of their own respective laws. Thus it is important that the compact pertain to cooperation in the enforcement of states’ accountancy laws and regulations. The compact cannot and does not create new, substantive offenses or co-opt federal authority established by Congress or otherwise recognized under the Constitution’s Commerce Clause.

The term “transborder” pertains to offenses initiated in one state but having their effect or harm in another state. “Multistate” refers to conduct that not only violates the accountancy regulations of more than one state, but also causes harm in multiple jurisdictions.

The importance of enforcement cooperation among the state boards has increased along with effort to improve licensee mobility. States must be able to work together in order to protect the public in more effective and efficient ways. The need for ease of enforcement is as great as the need for ease of mobility and is highlighted by requirements such as the one found UAA § 23 (b): “A licensee of this state offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding Section 11(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.”

Article II. Entry into Force and Withdrawal

A. This compact shall enter into force when approved by any two (2) of the states or territories of the United States. Thereafter, this compact shall become effective as to any other of the aforementioned states upon its approval thereof.

B. Any party state may withdraw from this compact by the same means as said party state approved this compact, but no such withdrawal shall take effect until one year after the board of accountancy of the withdrawing state has given notice in writing of the withdrawal to the boards of accountancy of all other party states. Any records, files, or information obtained by officers or employees of a withdrawing state shall continue to be kept, used, and disposed of only in such manner as is consistent with this compact and any rules or regulations pursuant thereto.

Comment: As explained in the Comment to the first paragraph of this compact, many state boards may already have statutory authority to cooperate with other jurisdictions in the enforcement of accountancy statutes and regulations. For example, UAA § 4 (g)(1) now provides: “The Board shall also have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony, to cooperate with the PCAOB and the appropriate state and federal regulatory authorities having jurisdiction over the professional conduct in question in investigation and enforcement concerning violations of this Act and comparable acts of other states; to cooperate in enforcement with appropriate foreign regulatory authorities in instances which have or may result in criminal conviction, loss of license or suspension, admonishment or censure; and to receive evidence concerning all matters within the scope of this Act.”

Article III. The Compact

A. There is hereby established the "State Accountancy Regulation Enforcement Compact," hereinafter called the "compact," to be composed of a representative from each party state who shall be the administrative head of the state board of accountancy from each party state, hereinafter called the “administrator,” from each party state. If enforcement of a state’s accountancy regulation is handled by an agency other than the state board of accountancy, then such agency’s administrator, may be designated to serve as the appropriate state accountancy regulatory official to the extent authorized by the respective state in lieu of the accountancy board’s administrator.

B. The administrator of a party state may provide for the discharge of his/her duties and the performance of his/her functions on the compact by an alternate. No such alternate shall be entitled to serve unless notification of his/her identity and appointment shall have been given to the compact in such form as the compact may require.

C. An alternate serving pursuant to paragraph B of this article shall be selected only from among the members and staff of the state board of accountancy, the head of which such alternate is to represent.

Comment: As a practical reality, this compact will be accompanied by at least one and probably two other forms of Cooperation Agreements or Protocols. The degree of formality depends entirely upon the needs of the cooperating state boards. Some may feel the need for express statutory authority and a high degree of formality. Others may find it easier to participate pursuant to a less structured model. Others may want to work with other jurisdictions on a case by case basis. The point of this compact is to provide a framework.

Article IV. Compact Powers

The compact shall have power to:

A. Consider and recommend means of identifying violators of state accountancy laws and regulations that may involve more than one party state;

B. Facilitate mutual assistance among the state boards of accountancy of the party states pursuant to Article V of this compact;

C. Promote cooperation in state accountancy regulation enforcement and make recommendations to the party states and other appropriate enforcement authorities for the improvement of such cooperation;

D. Supply, receive, and maintain confidential investigative information with state accountancy regulation enforcement personnel in other party states, subject to the same confidentiality requirements as would be applicable in the state of the board originally supplying such information. For purposes of this compact only, the term “enforcement personnel” shall include employees, agents, board members and contractors expressly authorized by the respective state board to participate in enforcement activity that is the subject of this compact;

E. Supply, receive and maintain confidential investigative information with other accountancy regulatory authorities such as the SEC, PCAOB and comparable foreign authorities to facilitate the enforcement of the participating states’ accountancy laws and regulations;

F. Supply, receive and maintain accountancy regulatory enforcement results for cases occurring in this or any other jurisdiction to facilitate the enforcement of the participating states’ accountancy laws and regulations;

G. Participate in the purchase of insurance to insure and indemnify the participating parties from any liability not covered by a party state’s sovereign immunity or tort claims acts;

H. Use the assistance and facilities of the National Association of State Boards of Accountancy in implementing the above stated purposes and powers; and

I. Do all things which may be necessary and incidental to the exercise of the foregoing powers.

Comment: Sections A, B and C are logical extensions of the work that NASBA has done for years through its Legal Affairs Committee, its UAA Committee, and through its annual conferences for Board Executives and Legal Counsel.

Sections D and E are essential to meaningful multistate enforcement. Some states may achieve this through less formal cooperation agreements or protocols.

Section F is also a logical extension of NASBA’s enforcement information exchange. Through this compact, the state boards could more fully participate in timely exchanges of current disciplinary case results.

In light of the protections already afforded by state sovereignty, Section G might have limited utility, but some participating states may find the availability of such coverage necessary. Section H allows state boards to work through NASBA rather than incur the expense and administrative challenges of creating a separate compact administration office.

Article V. Mutual Aid

A. As used in this Article:

- 1. "State" means the fifty (50) states of the United States, the District of Columbia, and the territory of Guam, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and such other territories recognized as members of the National Association of State Boards of Accountancy.**
- 2. "Party state" means any state that has agreed to participate in this compact, in whole or in part, whether by means of legislative enactment, by rule, by resolution, by order, or by agreement..**
- 3. "Requesting state" means the state whose state board of accountancy or other appropriate state accountancy regulatory official requests assistance.**
- 4. "Responding state" means the state furnishing aid, or requested to furnish aid, pursuant to this article.**

B. Upon the request for assistance of the administrator of the state board of accountancy or other appropriate state accountancy regulatory official (as described in Article III (A) of this Compact) of a party state, the administrator of the state board of accountancy or other appropriate state accountancy regulatory official of each responding state shall to the extent practicable provide such part of his/her state accountancy regulation enforcement personnel as he/she, in his/her discretion, may find necessary to aid the state accountancy regulation enforcement personnel of the requesting state in order to carry out the purposes set forth in this compact.

C. The administrator of the state board of accountancy or other appropriate state accountancy regulatory official of any party state, in his/her discretion, may withhold state accountancy regulation enforcement personnel.

Comment: The definition of "Party state" in Section A allows wide latitude in the means by which state boards may be able to participate in cooperative accountancy regulation enforcement. As explained above, some state boards' legal counsel might conclude that they otherwise currently lack sufficient statutory authority to overtly participate in the sharing of investigative information or resources. Other states may find it more expedient to cooperate on a case by case basis without the formality of a compact. Some may deem it necessary to approve the concept in a rule while others may already have the prerogative to approve via board order.

Section B anticipates a preference for cooperation tempered by individual state boards' practical considerations (for example, a small state neighboring a very populous state might not have the resources to fully facilitate every multistate matter without some system of prioritization or accommodation of budgetary constraints. (Fortunately, under Article IV, Section B, states might be able to assist budgetarily challenged states in significant multistate enforcement matters.)

Section B, also adapts for states in which the state boards are not directly involved in the enforcement process.

Section B (using the phrase “to the extent practicable”) as well as Section C allows the compact participants commonsense discretion in the allocation of personnel and resources.

Article VI. Construction and Severability

This compact shall be construed so as to effectuate the purpose thereof, and shall not be construed to nullify any existing or future statute or rule created by any party states. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Effective Date. This act shall take effective upon passage.