

APR-21-2000 10:11

Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order, as modified:

1. Respondent American Institute of Certified Public Accountants is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1211 Avenue of the Americas, New York, New York 10036-2775.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that for purposes of this order the following definitions shall apply:

A. "AICPA" means American Institute of Certified Public Accountants and its Board of Directors, Council, committees, task forces, officers, representatives, agents, employees, successors, and assigns;

B. "Attest service" means providing (1) any audit, (2) any review of a financial statement, (3) any compilation of a financial statement when the certified public accountant ("CPA") expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence, and (4) any examination of prospective financial information;

C. "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;

D. "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;

E. "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;

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F. "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;

G. "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;

H. "Examination of prospective financial information" means an evaluation by a CPA of: (1) a forecast or projection, (2) the support underlying the assumptions in the forecast or projection, (3) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and (4) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;

I. "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;

J. "Person" means any natural person, corporation, partnership, unincorporated association, or other entity;

K. "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;

L. "Referral fee" means compensation for recommending or referring any service of a CPA to any person;

M. "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and

N. "Trade name" means a name used to designate a business enterprise.

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II.

IT IS FURTHER ORDERED that AICPA, directly, indirectly, or through any person or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Restricting, regulating, impeding, declaring unethical, advising members against, or interfering with any of the following practices by any CPA:

1. The offering or rendering of professional services for, or the receipt of, a contingent fee by a CPA, provided that AICPA may prohibit the engaging to render or rendering by a CPA for a contingent fee:
 - (a) of professional services for, or the receipt of such a fee from, any person for whom the CPA also performs attest services, during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services; and
 - (b) for the preparation of original or amended tax returns or claims for tax refunds;
2. The offering or rendering of professional services for, or the receipt of, a disclosed commission by a CPA, provided that the engaging to render or rendering of professional services by a CPA for a commission for, or the receipt of a commission from, any person for whom the CPA also performs attest services may be prohibited by the AICPA during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services;
3. The payment or acceptance of any disclosed referral fee;
4. The solicitation of any potential client by any means, including direct solicitation;
5. Advertising, including, but not limited to:
 - (a) any self-laudatory or comparative claim;
 - (b) any testimonial or endorsement; and
 - (c) any advertisement not considered by AICPA to be professionally dignified or in good taste; and

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6. The use of any trade name:

PROVIDED THAT nothing contained in this order shall prohibit AICPA from formulating, adopting, disseminating, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to solicitation, advertising or trade names, including unsubstantiated representations, that AICPA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act;

B. Taking or threatening to take formal or informal disciplinary action, or conducting any investigation or inquiry, applying standards in violation of this order;

C. Adopting or maintaining any rule, regulation, interpretation, ethical ruling, concept, policy, or course of conduct that is in violation of this order;

D. Inducing, urging, encouraging, or assisting any association of accountants to engage in any act that would violate this order if done by AICPA provided, however, that nothing in this order shall prohibit AICPA from soliciting action by any federal, state or local governmental entity; and

E. Applying or interpreting any other language contained in the Code of Professional Conduct or its successors in a manner that would violate this order;

PROVIDED THAT this order shall not prohibit AICPA from:

(a) suspending membership in AICPA if:

- i. a member's certificate as a CPA or license or permit to practice as such or to practice public accounting is suspended as a disciplinary measure by any governmental entity;
- ii. a member's registration as an investment adviser is suspended by the SEC;
- iii. a member's registration as a broker-dealer is suspended by the SEC or by any state agency acting pursuant to any applicable state law or regulation relating to the issuance, registration, purchase or sale of securities; or
- iv. a member is suspended from practicing before the IRS,

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but any such suspension by AICPA shall terminate upon reinstatement of any such certificate, license, permit, registration, or authorization to practice; or

(b) terminating membership in AICPA if:

- i. a member's certificate as a CPA or license or permit to practice as such or to practice public accounting is revoked, withdrawn or cancelled as a disciplinary measure by any governmental entity;
- ii. a member's registration as an investment adviser is revoked by the SEC;
- iii. a member's registration as a broker-dealer is revoked by the SEC or by any state agency acting pursuant to any applicable state law or regulation relating to the issuance, registration, purchase or sale of securities;
- iv. a member is subject to a final judgment of conviction for criminal fraud or for a crime punishable by imprisonment for more than one year; or
- v. a member is disbarred from practicing before the IRS.

III.

IT IS FURTHER ORDERED that AICPA shall:

A. Distribute a copy of this order and an announcement in the form shown in Appendix A, within thirty (30) days after this order becomes final, to all personnel, agents, or representatives of AICPA having responsibilities with respect to the subject matter of this order and secure from each such person a signed statement acknowledging receipt of this order and said announcement;

B. Distribute by mail a copy of this order and an announcement in the form shown in Appendix A, within thirty (30) days after this order becomes final, to each of its members and to each state society of certified public accountants;

C. Publish this order and an announcement in the form shown in Appendix A, within sixty (60) days after this order becomes final, in an issue of the "Journal of Accountancy," AICPA's monthly journal, or in any successor publication, in the same type size normally used for articles which are published in the "Journal of Accountancy" or in any successor publication;

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D. Within ninety (90) days after this order becomes final, publish and distribute to all members of AICPA and to all personnel, agents, or representatives of AICPA having responsibilities with respect to the subject matter of this order revised versions of AICPA's Code of Professional Conduct, Bylaws, concepts of professional ethics, interpretations, ethical rulings, or other policy statements or guidelines of AICPA which (1) delete any material that is inconsistent with Part II of this order and (2) otherwise comply with this order;

E. File with the Federal Trade Commission within sixty (60) days after this order becomes final, one (1) year after this order becomes final, and at such other times as the Federal Trade Commission may by written notice to AICPA request, a report in writing setting forth in detail the manner and form in which it has complied and is complying with this order;

F. For a period of five (5) years after this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Parts II and III of this order, including any written communications and any summaries of oral communications, and any disciplinary action; and

G. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in AICPA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

By the Commission. Commissioners Arcuena and Owen dissented.

Donald S. Clark
Donald S. Clark
Secretary

SEAL

ISSUED: July 26, 1990

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CPA - STANDARDS 615-591-2882

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TOTAL P.00

[Home](#) · [States](#) · State Rules on Commission and Contingent Fees



State Rules on Commissions and Contingent Fees

STATE	PERMIT	PROHIBIT	
		Statute	Regulation
Alabama	X		
Alaska			X
Arizona	X		
Arkansas	X		
California	X		
Colorado	X		
Connecticut		X	
Delaware	X		
D.C.			X
Florida	X		
Georgia	X		
Guam	X		
Hawaii			X
Idaho		X	
Illinois	X		
Indiana	X		
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine	X		
Maryland ¹	X		
Massachusetts	X		
Michigan	X		
Minnesota	X		
Mississippi ¹	X		
Missouri	X		
Montana			X
Nebraska	X		
Nevada	X		

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AICPA State Legislative Issues Documents

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New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York ²			X
North Carolina ¹	X		
North Dakota	X		
Ohio	X		
Oklahoma	X		
Oregon ³		X	
Pennsylvania	X		
Puerto Rico			X
Rhode Island ⁴		X	
South Carolina	X		
South Dakota	X		
Tennessee	X		
Texas	X		
Utah	X		
Vermont	X		
Virginia	X		
Virgin Islands			X
Washington ⁵			X
West Virginia	X		
Wisconsin	X		
Wyoming ³			X
TOTALS	41	4	9

- 1 Commissions permitted with disclosure; contingent fees prohibited (regulation).
- 2 Commissions prohibited, limited to the services performed under the practice of public accountancy; contingent fees permitted (regulation).
- 3 Commissions prohibited; contingent fees permitted (regulation).
- 4 Commissions prohibited (statute); contingent fees prohibited (regulation).
- 5 Commissions prohibited for licensees in public practice only; contingent fees prohibited, except in restricted circumstance, for licensees in public practice only (regulation).
- * Permitted through rules.

AICPA State Societies and Regulatory Affairs
Information compiled from CCH Accountancy Law Reporter and Lexis Nexis

March 10, 2000



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COMMISSIONS AND CONTINGENT FEES

ISSUE: Under what condition should CPAs be allowed to accept commissions and contingent fees.

BACKGROUND: Historically, CPAs were not allowed to accept commissions and contingent fees. However, when the Federal Trade Commission (FTC) initiated a non-public investigation focusing on the AICPA's commission and contingent fee rules, it concluded that the Institute's rules violated Section 5 of the FTC Act. To end the investigation, AICPA signed a Final Order with the FTC in 1990 narrowing AICPA's ability to prohibit the acceptance of commissions and contingent fees. The AICPA rules, issued after the FTC Order became effective, prohibit the acceptance of commissions and contingent fees only with respect to clients for whom the AICPA member performs attest (as specifically defined in the Order) services. The AICPA rule also prohibits members from preparing original or amended tax returns or claims for tax refunds for a contingent fee.

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At the same time of entering into the FTC agreement, which only impacted the AICPA membership requirements, the AICPA governing Council endorsed a resolution to encourage states to seek legislation to prohibit the acceptance or payment of any commission by those in the practice of public accountancy.

More recently the trend has been for states to allow CPAs to accept commissions and contingent fees. During 1997, the AICPA/NASBA Joint Committee on Regulation of the Profession recommended in its Final Report that the position on fee acceptance be modified to enable CPAs to accept commissions with full disclosure, except in situations where the CPA performs attest services for a client. CPAs could accept contingent fees for services, except from clients for whom they perform attest services and for preparing an original tax return. Contingent fees for preparation of amended tax returns or refund claims would be permitted, as long as the CPA had a reasonable expectation the claim would be the subject of a substantive review by the taxing authority. In May 1997, the AICPA governing Council voted overwhelmingly to adopt all of the recommendations of the AICPA/NASBA Joint Committee on Regulation of the Profession, thereby eliminating the AICPA position on restrictions that had previously existed on fee arrangements.

WHY IT'S IMPORTANT TO CPAs:

The public's image of the accounting profession is affected most by the quality of the services it receives, not by the fee arrangement for those services. As long as fee arrangements are disclosed, the public is free to choose the type of arrangement it wants. In the eyes of many, prohibitions against such fee arrangements are viewed as self-serving, anti-competitive and not in the public's interest. In some cases, clients are not able to pay for services on an hourly basis, and actually prefer a contingent fee basis. In a free market system, the marketplace should dictate fee arrangements as long as they are disclosed to clients, unless there is an overriding public interest, which is the case for attest services.

AICPA POSITION:

A provision permitting the acceptance of commissions and contingent fees, as outlined above, is now included in the *Uniform Accountancy Act* as Sections 14(m-n). The language is taken from the AICPA's Code of Professional Conduct.

STATE ACTION:

Significant activity occurred during 1999. Forty jurisdictions currently provide for the acceptance of commissions and/or contingent fees. Several states are expected to introduce proposals in the 2000 legislative sessions.

**AICPA STAFF
CONTACTS:**

John Sherbaugh, State Societies & Regulatory Affairs 202/434-9257
Sheri Bango, State Societies & Regulatory Affairs 202/434-9201

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PICPA FAX TRANSMISSION SHEET

Pennsylvania Institute of CPAs
100 Pine Street, Suite 275
Harrisburg, PA 17101
(717) 232-1821 FAX (717) 232-7708

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To: John Jewett

LEGISLATIVE
REVIEW COMMISSION

Date: 4-21-00

From: PICPA Government Relations Team
 Peter Calcara
 Courtney Morgan
 Kim Shaffer

Total Pages (including cover sheet): 11

Notes: John -

Attached is FTC consent agreement
w/AICPA and chart of states permitting
commissions.

Please call with questions.

Peter



Do you know a Pennsylvania legislator? Help the PICPA establish more effective communication links between CPAs and elected officials. Get Involved in the political process by becoming a PICPA key person contact. Call Kim Shaffer to receive a key contact form at 717-232-1821.

Original: 2101

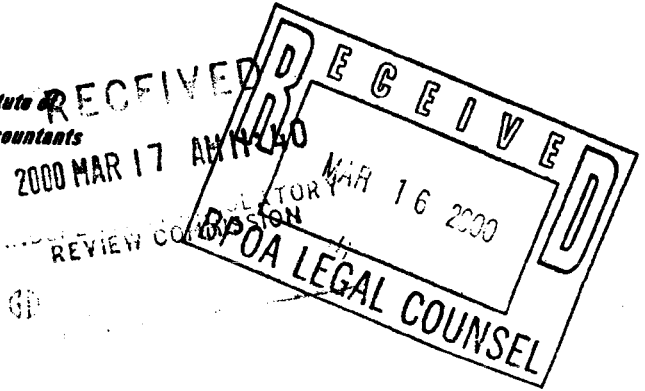
Bush

cc:

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de Bien
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Legal



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March 13, 2000

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Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

100 Pine Street
Suite 275
Harrisburg, PA 17101-1206
(717) 232-1821
fax (717) 232-7708

Re: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

On behalf of the 19,000 members of the Pennsylvania Institute of Certified Public Accountants, I would like to take this opportunity to express our comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 – published in *Pennsylvania Bulletin*, March 4, 2000).

In general, the PICPA supports the provisions of the proposed regulation, with the exception of Paragraph (g). The PICPA does not agree with the imposition of the independence standard of “significant influence” with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the American Institute of CPAs or PICPA Rules of Conduct regarding receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. We believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.

Under paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standard. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that

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Steven Wennberg, Esq.
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March 13, 2000

licensee at a competitive disadvantage compared with licensees around the country. In the ever shrinking world of electronic commerce, to link two separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

Apart from the undesirability of this provision based upon considerations of ambiguity, economics, and conflict with ethical rules of conduct, there is a fundamental legal problem with proposed Paragraph (g). Simply stated, the Board lacks authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12 (p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12 (p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application of the statute beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

The PICPA strongly suggests that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this regulation. We have previously offered to meet with the State Board to discuss this matter, and we reiterate our offer. If we can be of further assistance, please feel free to contact me or Mr. Michael Colgan of the PICPA.

Sincerely,

Gary R. Claus, CPA
President

C: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor – Harristown 2
333 Market Street
Harrisburg, PA 17101



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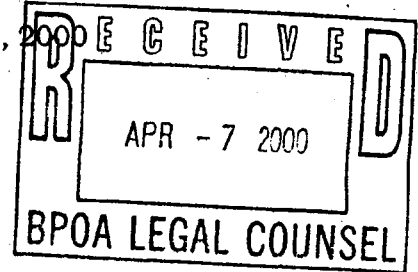
e-mail: bbraun@grgrp.com

2000 APR - 7 PM 4-28

REVIEW COMMISSION



April 5, 2000



Steven Wennberg, Esq.
State Board of Accountants
C116 Pine Street
PO Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Commission and Referral Fee Regulations

Dear Mr. Wennberg:

I recently read regulations proposed by the State Board of Accountants regarding the receipt of commissions. I have also reviewed a letter addressed to you from Gary Claus that comments on these proposed regulations.

As a member of the PICPA, I strongly agree with the statements made by Mr. Claus. I believe that paragraph (g) of the proposed regulations should be deleted. The rules pertaining to significant influence are vague, and not written in the public interest. I am also concerned that Pennsylvania has taken such a hard line on this matter when most, if not all of the states in the country, have chosen to adopt the AICPA standards.

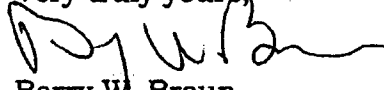
I have been providing financial services for well over a year, and work closely with clients in all financial matters, including investments and insurance, I strongly believe that these services provide a tremendous benefit to our clientele. As CPAs, there is no one as uniquely qualified to provide a valuable service and advise our clients in matters such as these. Every action that our firm takes is done with the best interest of our clients in mind. The feedback we receive from our clients pertaining to the financial services we have performed for them has been very positive. In no way has providing these services ever affected our independence or our relationship with clients.

Allowing the restrictions imposed in paragraph (g) to remain only serves to reduce the services and benefits we provide to clients. Our profession is known for its high level of integrity and honesty. We have demonstrated for a number of years

that this reputation is well deserved. Please do not make Pennsylvania the only place where a state board questions the integrity of its member accountants.

Thank you for the opportunity to provide these comments to the state board regarding this regulation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Barry W. Braun', written in a cursive style.

Barry W. Braun
Partner

**IRRC # 2101
Fees**

Title Commissions and Referral

(Form A)		
NAME	ADDRESS	DATE Correspondence
Barry W. Braun	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 5, 2000</u>
Stephen F. Raab	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 4, 2000</u>
Elliott Roth	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 4, 2000</u>
Mitchell M. Wilf	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 3, 2000</u>
Mark A. Master	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 3, 2000</u>
Roger J. Davis	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 4, 2000</u>
Russell E. Gordon	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 3, 2000</u>
Arthur I. Cohn	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 3, 2000</u>
Gary S. Master	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 3, 2000</u>
Richard Schmeltzer	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 7, 2000</u>
David A. Gruber	101 West Avenue, P.O. Box 458 Jenkintown, PA 19046-0458	<u>April 5, 2000</u>

Buchanan Ingersoll

PROFESSIONAL CORPORATION

Attorneys

Original: 2101

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Mailing Address:
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Harrisburg, PA 17108-2023

April 4, 2000

VIA FACSIMILE AND REGULAR MAIL

Steven J. Wennberg, Esquire
General Counsel
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

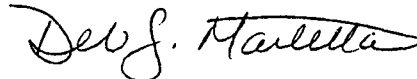
**Re: H.D. Vest -- Comments to the Proposed Regulations of the State
Board of Accountancy; Section 11.24**

Dear Steve:

On behalf of H.D. Vest, I am submitting the attached comments to the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees. (Section 11.24 - published in the Pennsylvania Bulletin, March 4, 2000).

Thank you for the opportunity to comment. Please contact me if you have any questions.

Sincerely,



Deborah Suder Martella

DSM/lak
Encl.

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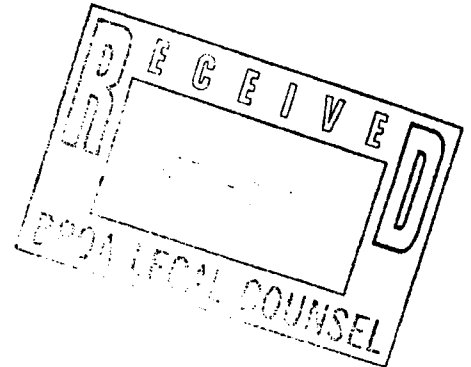
Gene M. Buckno, CPA
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Stanley J. Bushner, CPA
Bruce C. Reimer, CPA
Randal R. Dietz, CPA
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Jeffrey E. Dobeck, CPA
Sally A. Leabold, CPA
Christopher F. Lloyd, CPA
Joseph A. Mastriani, CPA/PFS CFP
Michael D. Pickett, CPA

Original: 2101

March 31, 2000

Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649



RE: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

I am writing to the State Board of Accountancy to strongly urge that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

I am in opposition because of the vagueness of the language and the lack of a measurement standard. A licensee would not be able to determine how independence might be impaired. For example, if a licensee provides investment advisory services to a shareholder or employee of an attest client and the licensee receives a commission as compensation from the shareholder or employee, it is considered a separate client and a separate engagement. Linking together two separate engagements could pose a difficult interpretive issue since independence is not defined in either the statute or the existing regulations.

In closing, I reiterate my strong opposition to Paragraph (g) being included in the regulation regarding Commissions and Referral Fees.

Sincerely,

Bruce A. Palmer, CPA
Shareholder/Director

cc: Richard Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor - Harrisstown 2
333 Market Street
Harrisburg, PA 17101



Certified Public Accountants and Business Advisors

Schneider Downs & Co., Inc.

1133 Penn Avenue
Pittsburgh, PA 15222
412/261-3644
FAX 412/261-4876

Original: 2101

RECEIVED

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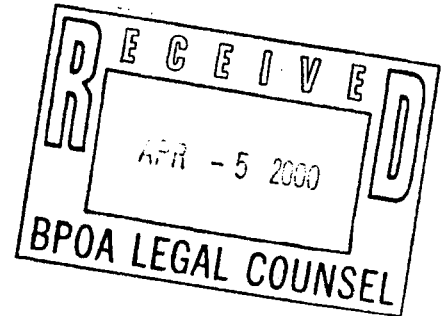
REVIEW COMMISSION

One Columbus, Suite 1500
10 West Broad Street
Columbus, OH 43215
614/621-4060
FAX 614/621-4062

<http://www.sdcpa.com>

March 29, 2000

Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649



Dear Mr. Wennberg:

Re: Proposed Commission and Referral Fee Regulation

I would like to take this opportunity to express my comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 – published in *Pennsylvania Bulletin*, March 4, 2000).

In general, I support the provisions of the proposed regulation, with the exception of Paragraph (g). I do not agree with the imposition of the independence standard of “significant influence” with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the AICPA nor the PICPA Rules of Conduct regarding the receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. I believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.

Under Paragraph (g) of the proposed regulation, licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standard. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that licensee at a competitive disadvantage compared with licensees around the

March 29, 2000
Steven Wennberg, Esq.
Page 2

country. In the ever shrinking world of electronic commerce, to link two separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

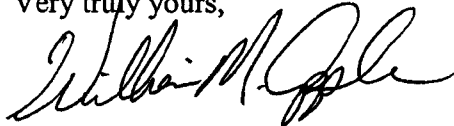
Apart from the undesirability of this provision based upon considerations of ambiguity, economics and conflict with ethical rules of conduct, there is a fundamental problem with proposed Paragraph (g). Simply stated, the Board lacks the authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12(p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12 (p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

I strongly suggest that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this proposed regulation.

Very truly yours,



William M. Apple, CPA/PFS
Shareholder

EMD/jls
Ref: 18500
cc: Richard M. Sandusky
Deputy Director of Legislative Analysis
Independent Regulatory Review Commission
14th Floor – Harrisstown 2
333 Market Street
Harrisburg, PA 17101
FAUSERS\JLS\EMD\STA\BOARDREG

**IRRC # 2101
Fees**

Title Commissions and Referral

(Form B)

NAME	ADDRESS	DATE of CORRESPONDENCE
William M. Apple	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Eugene M. DeFrank	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Timothy J. Hammer	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Nancy L. Bromall	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Raymond W. Buehler, Jr.	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Thomas G. Claassen	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Gennaro J. DiBello	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Brian C. O'Brien	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>
Joseph J. Patrick	1133 Penn Avenue Pittsburgh, PA 15222	<u>March 29, 2000</u>

Original: 2101

RECEIVED
2000 MAR 30 PM 12:33
INDEPENDENT REGULATORY
REVIEW COMMISSION

March 27, 2000

Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P. O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

I am a certified public accountant and licensee in Pennsylvania and take exception to Paragraph (g) of the above-referenced regulation.

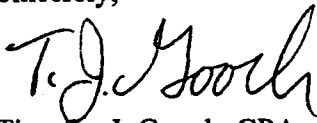
I do not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions and believe that Paragraph (g) is vague, ambiguous and conflicts with the ethical rules of conduct of the accounting profession.

If a licensee provides investment advisory services to a shareholder or employee of an attest client and the licensee receives a commission as compensation from the shareholder or employee, it is considered a separate client and a separate engagement. Linking together two separate engagements could pose a difficult interpretive issue since independence is not defined in either the statute or the existing regulations. Existing independence regulations do not refer to commissions and are written to include attest activities only.

Under Paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the lack of a measurement standard. A licensee would not be able to determine how independence might be impaired. Furthermore, a licensee in Pennsylvania will be at a competitive disadvantage with licensees of other states because of the more restrictive standard and regulation.

I **strongly urge** that Paragraph (g) be **deleted** from the proposed regulation regarding Commissions and Referral Fees.

Sincerely,



Timothy J. Gooch, CPA
cc: Representative Matthew E. Baker

Nancy\wennberg3\2000

RECEIVED
MAR 29 2000
BPOA LEGAL COUNSEL

3-28-2000



MATTHEW E. BAKER
MEMBER, 68TH DISTRICT
HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

Dear Mr. Wennberg,

I sincerely hope MR.
Gooch has an issue here
that you will carefully
consider for change.

Thank you! - Rep. Matt
Baker

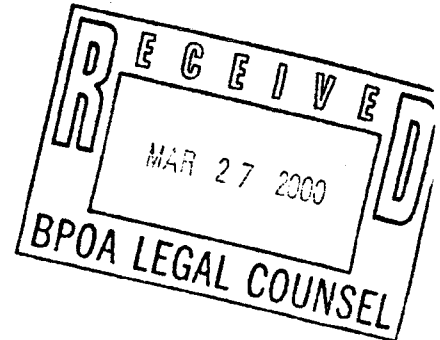
RECEIVED DAVID A. CAPITANO, CPA

2000 MAR 27 PM 1:37

March 25, 2000

REGULATORY
REVIEW COMMISSION

Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P. O. Box 2649
Harrisburg, Pennsylvania 17105-2649



RE: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

I am a certified public accountant and licensee in Pennsylvania and take exception to Paragraph (g) of the above-referenced regulation.

I do not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions and believe that Paragraph (g) is vague, ambiguous and conflicts with the ethical rules of conduct of the accounting profession.

If a licensee provides investment advisory services to a shareholder or employee of an attest client and the licensee receives a commission as compensation from the shareholder or employee, it is considered a separate client and a separate engagement. Linking together two separate engagements could pose a difficult interpretive issue since independence is not defined in either the statute or the existing regulations. Existing independence regulations do not refer to commissions and are written to include attest activities only.

Under Paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the lack of a measurement standard. A licensee would not be able to determine how independence might be impaired. Furthermore, a licensee in Pennsylvania will be at a competitive disadvantage with licensees of other states because of the more restrictive standard and regulation.

I strongly urge that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Sincerely,

David A. Capitano, CPA

DAC/dde

**IRRC # 2101
Fees**

Title Commission and Referral

(Form C)		
NAME	ADDRESS	DATE of CORRESPONDENCE
Brian L. Enverso	Not given	<u>March 27, 2000</u>
John P. Nealon	3 Estate Drive Clarks Summit, PA 18411	<u>March 28, 2000</u>
Carlton E. Preate	715 Glenburn Road Clarks Summit, PA 18411	<u>March 28, 2000</u>
Michael A. Valucci	1402 Royal Oak Road Blue Bell, PA 19422	<u>March 28, 2000</u>
Robert J. Korjeski	519 Stephenson Street Duryea, PA 18642	<u>March 29, 2000</u>
Eugene A. Korjeski	102 Krystal Circle Archbald, PA 18403	<u>March 24, 2000</u>
Kent L. Jenkins	<u>Not given</u>	<u>March 29, 2000</u>
William P. McGowan	320 Sanders Street Scranton, PA 18505	<u>March 28, 2000</u>
Barbara T. Midura	630 Carnation Drive Clarks Summit, PA 18411	<u>March 28, 2000</u>
James R. Wehr	<u>Not given</u>	<u>March 29, 2000</u>
Iboya Balog	1522 1/2 Chew Street Allentown, PA 18102	<u>March 24, 2000</u>
John J. Benavage	<u>Not given</u>	<u>April 1, 2000</u>
Robert E. Blizard, Jr.	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Shawn P. Burrier	1342 Rundle Street Scranton, PA 18504	<u>March 28, 2000</u>
Matthew J. Cours	R.D. # 2, Box 60 Dalton, PA 18414	<u>March 28, 2000</u>
Tina M. Dudek	<u>Not given</u>	<u>March 28, 2000</u>
Michael J. Gallagher	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Charles R. Guarino	<u>Not given</u>	<u>March 29, 2000</u>
Sally a. Leabold	1110 W. Broad Street Bethlehem, PA 18018-4926	<u>March 31, 2000</u>

Michael Linko	106 Agnes Street Olyphant, PA 18447	<u>March 28, 2000</u>
John J. Malahoski	18 Old North Road Mountaintop, PA 18707-2226	<u>March 31, 2000</u>
Joan M. Pechal Metcalf	17 Highland Drive Dallas, PA 18612	<u>March 24, 2000</u>
Victor J. Meyer	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Raymond p. Minich	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Sharon A. Pruzinsky	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Edward J. Quigley, Jr.	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Philip A. Vanim	1110 W. Broad Street Bethlehem, PA 18018-4926	<u>March 31, 2000</u>
William A. Billowitch	1524 Linden Street Allentown, PA 18102-4251	<u>March 28, 2000</u>
Anthony J. Buczek	1524 Linden Street Allentown, PA 18102-4251	<u>March 31, 2000</u>
Michael D. Pickett	1524 Linden Street Allentown, PA 18102-4251	<u>March 28, 2000</u>
David A. Capitano	<u>Not given</u>	<u>March 25, 2000</u>
Dee A. McConnel	1 South Church Street Hazleton, PA 18201	<u>March 27, 2000</u>
Peter J. Loftus	1121 Columbia Street Scranton, PA 18509	<u>March 27, 2000</u>
Fred J. Leoniak	<u>Not given</u>	<u>March 27, 2000</u>
Barbara Laputka	1 South Church Street Hazelton, PA 18201	<u>March 27, 2000</u>
Dennis R. Moore	1 South Church Street Hazleton, PA 18201	<u>March 25, 2000</u>
William R. Merrell	860 Rural Avenue Williamsport, PA 17701	<u>March 24, 2000</u>
Debra K. Nunn	<u>Not given</u>	<u>March 27, 2000</u>
Charles J. Morgan	34 Osborne Drive Pittston, PA 18640	<u>March 28, 2000</u>
Edward A. Phillips	2301 Cherry Street # 3-C Philadelphia, PA 19103	<u>March 24, 2000</u>
Eugene Pelesh	44 Gershom Place	<u>March 24, 2000</u>
John Riccetti	<u>Not given</u>	<u>March 28, 2000</u>

John J. Cherb	2045 Westgate Drive, Suite 404 Bethlehem, PA 18017	<u>March 24, 2000</u>
Robert J. Radics	18 Timothy Road, K.T. Wyoming, PA 18644	<u>March 27, 2000</u>
Philip J. Santarelli	<u>Not given</u>	<u>March 28, 2000</u>
Mark J. Ross	422 Northern Spy Road Clarks Summit, PA 18411	<u>March 24, 2000</u>
Jane M. Sommer	<u>Not given</u>	<u>March 29, 2000</u>
Dwayne M. Tressler	347 Washington Street Berwick, PA 18603	<u>March 24, 2000</u>
Brian W. Wingard	519 Fairmont Avenue, Apt. # 3 South Williamsport, PA 17702	<u>March 24, 2000</u>
John J. Foley	1020 Electric Street	<u>March 27, 2000</u>
Paul J. Gleva	P.O. Box 86 Bear Creek, PA 18602	<u>March 27, 2000</u>
Kristin A. Gattuso	46 Public Square Suite 400 Wilkes-Barre, PA 18701-2681	<u>March, 28 2000</u>
Joseph A. Grandinetti	84 Valley View Drive Mountaintop, PA 1877	<u>March 27, 2000</u>
Dale F. Hoffman	109 Inverrary Drive Blue Bell, PA 19422	<u>March 24, 2000</u>
Nadine L. Hromisin	9 Osborne Drive Pittston, PA 18640	<u>March 28, 2000</u>
Jacqueline M. Johnson	<u>Not given</u>	<u>March 28, 2000</u>
Suzanne M. Fletcher	<u>Not given</u>	<u>March 28, 2000</u>
Jeffrey L. Ferro	<u>Not given</u>	<u>March 24, 2000</u>
Richard E. Everhart, Jr.	<u>Not given</u>	<u>March 28, 2000</u>
John W. Compton, Jr.	426-C Brandon Avenue Williamsport, PA 17701	<u>March 24, 2000</u>
Robert J. Ciaruffoli	104 Thackeray Cloes Moosic, PA 18507	<u>March 24, 2000</u>
Thomas M. Burke	<u>Not given</u>	<u>March 27, 2000</u>
Frank P. Brennan	<u>Not given</u>	<u>March 24, 2000</u>
James a. Wilson	<u>Not given</u>	<u>March 28, 2000</u>
Barbara A. Sieminski	<u>Not given</u>	<u>March 28, 2000</u>

Ronald W. Rogozinski	1427 Chew Street P.O. Box 4376 Allentown, PA 18105-4376	<u>March 24, 2000</u>
M. Susan Rish	<u>Not given</u>	<u>March 28, 2000</u>
John J Reynolds	923 Throop Street Dickson City, PA 18519	<u>March 28, 2000</u>
Joseph Pigga	614 Shirley Lane Dunmore, PA 18512	<u>March 28, 2000</u>
Robert S. Pierce	<u>Not given</u>	<u>March 30, 2000</u>
James J. Gattuso	<u>Not given</u>	<u>March 28, 2000</u>
Andrea Caladie	<u>Not given</u>	<u>March 28, 2000</u>
Robert A. Oster	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Kenneth P. Harmony, Jr.	Gateway Professional Center, 2045 Westgate Drive, Ste 404, Bethlehem, PA 18017	<u>March 24, 2000</u>
Andrew p. Kahn	Gateway Professional Center, 2045 Westgate Drive, Ste 404, Bethlehem, PA 18017	<u>March 24, 2000</u>
Keith R. Bachman	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Robert M. Caster	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Vincent H. DeSanctis	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Harry A. Gabrielli	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
David C. Gehringer	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
E. Barry Hetzel	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Denies J. Hozza	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
William C. Mason	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Michael R. Miller	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Kristin E. Pennell	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
John F. Sharkey, Jr.	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Robert E. Vitale	1515 Martin Luther King Drive Allentown, PA 18102	<u>March 24, 2000</u>
Erin Schatzel	<u>Not given</u>	<u>March 24, 2000</u>

Dale E. Grate, CPA
1515 Martin Luther King Drive
Allentown, PA 18102

Original: 2101

March 24, 2000

Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P. O. Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

I am a certified public accountant and licensee in Pennsylvania and take exception to Paragraph (g) of the above-referenced regulation.

I do not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions and believe that Paragraph (g) is vague, ambiguous and conflicts with the ethical rules of conduct of the accounting profession.

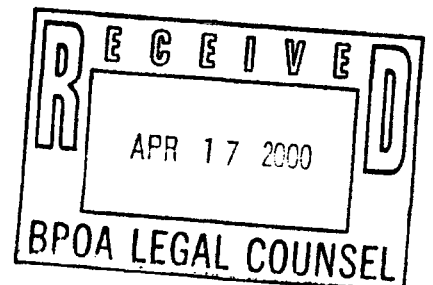
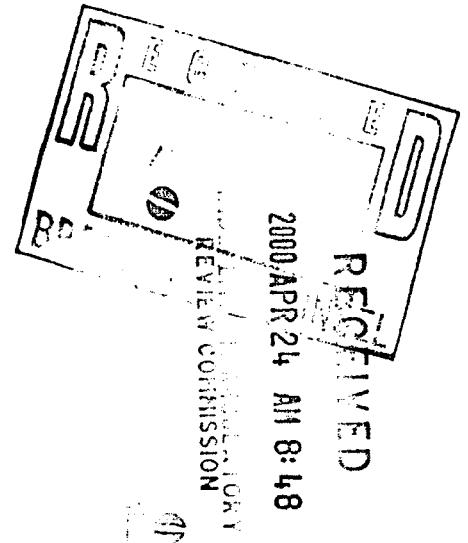
If a licensee provides investment advisory services to a shareholder or employee of an attest client and the licensee receives a commission as compensation from the shareholder or employee, it is considered a separate client and a separate engagement. Linking together two separate engagements could pose a difficult interpretive issue since independence is not defined in either the statute or the existing regulations. Existing independence regulations do not refer to commissions and are written to include attest activities only.

Under Paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the lack of a measurement standard. A licensee would not be able to determine how independence might be impaired. Furthermore, a licensee in Pennsylvania will be at a competitive disadvantage with licensees of other states because of the more restrictive standard and regulation.

I strongly urge that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Sincerely,


Dale E. Grate, CPA





MAC DADE ABBOTT LLP

CERTIFIED PUBLIC ACCOUNTANTS
STATION SQUARE THREE
PAOLI, PA 19301-1321

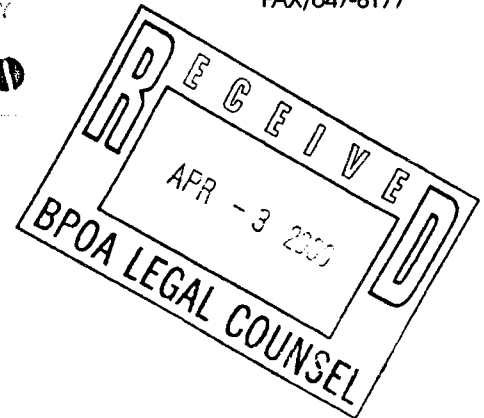
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2000 APR -5 AM 8:32

email: macdade@dvol.com
610/647-8100
FAX/647-8177

Original: 2101

INDEPENDENT REGULATORY
REVIEW COMMISSION



March 22, 2000

Mr. Steven Wennberg, Esq
State Board of Accountancy
116 Pine Street
PO Box 2649
Harrisburg PA 17105-2649

RE: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

This letter is in response to the proposed regulations of the Pennsylvania State Board of Accountancy rules regarding Commission and Referral Fees (Section 11.24).

I am strongly opposed to this rule which prevents CPAs from receiving commissions or referral fees pertaining to working with non attest clients (individuals) who have "significant influence" over accounting matters of "attest" clients. I believe the State Board of Accountancy should follow the same rules as the AICPA which has no such prohibition, and not put Pennsylvania CPAs at a competitive disadvantage.

American Express and H&R Block can provide both accounting and investments services to clients, receiving accounting fees and commissions. I have to compete with American Express and H&R Block who can offer these services to their clients without being subject to these rules. Your ruling is putting me at a tremendous competitive disadvantage that over time, I believe, will force me to sell out to American Express (or another consolidator) or go out of business.

I also believe this regulation puts my clients at a disadvantage by not being able to offer them help I am qualified to provide. In essence you are telling my client to pay for services twice. Obtain generic investment advice from me and go somewhere else to implement that advice.

I have enclosed the letter written by Gary R. Claus of the PICPA which expresses some of the same sentiments in more detail. I am in agreement with Gary R. Claus's letter.

I recommend our rules mirror the AICPA code of ethics as they relate to commissions and fees.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Sandusky". The signature is stylized with a large initial "R" and a long, sweeping horizontal line extending to the right.

CC: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg PA 1710

GABLE, PERITZ, MISHKIN & CO.
Certified Public Accountants

**HERBERT GABLE
STANTON L. PERITZ
NELSON C. MISHKIN
RICHARD P. DAVOLI
ALAN C. WECHT
THOMAS W. MASOERO
KENNETH S. FREBOWITZ
REGINA C. O'KEEFE**

March 20, 2000

Original: 2101

Steven Wennberg, Esq.
State Board of Accountancy
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

We wish to add our own comments to those you have recently received from the Pennsylvania Institute of Certified Public Accountants. We strongly reiterate all the comments expressed by our organization.

We wish to add our impression of the unfairness and ambiguity the proposal presents. CPAs in New Jersey and other states are not restricted as in the proposed regulation from receiving commissions from persons who exert "significant influence". This places us at a competitive disadvantage with our neighboring CPAs in New Jersey. It also creates ambiguities in situations which apply directly to us such as the following. A CPA may be licensed in both Pennsylvania and New Jersey. If he wants to accept a commission from a person who can exercise significant influence on an attest client who is located primarily in New Jersey, is he subject to the regulation? Does the regulation apply if the client does business in both New Jersey and Pennsylvania? Does the regulation apply if one partner of the firm who is not licensed in New Jersey accepts the commission personally and shares it with other partners who are licensed in New Jersey? Does the regulation apply if the commission is received by a separate entity owned by the same owners as the CPA firm?

We could go on listing the various combinations and permutations of scenarios which would be unclear under the proposed regulation.

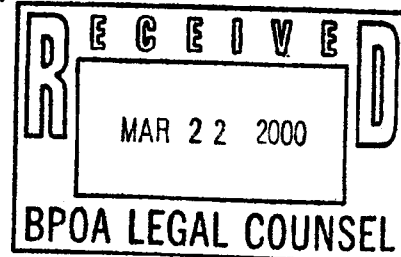
We appreciate your consideration of these comments.

Very truly yours,



Kenneth S. Frebowitz

KSF/smp



TRKOUT, EBERSOLE & GROFF, LLP
CERTIFIED PUBLIC ACCOUNTANTS

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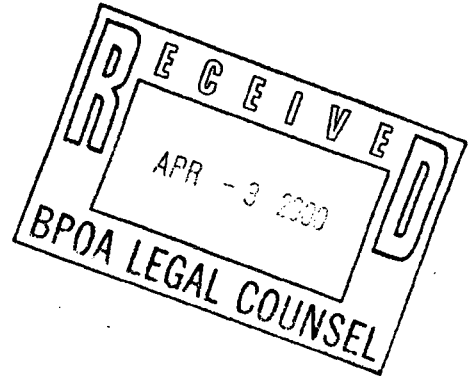
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REGULATORY
REVIEW COMMISSION

1705 OREGON PIKE
LANCASTER, PENNSYLVANIA 17601
(717) 569-2900
TOLL FREE 1 (800) 448-1384
FAX (717) 569-0141

March 19, 2000

Original: 2101



Mr. Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

On behalf of the 19,000 members of the Pennsylvania Institute of Certified Public Accountants, I would like to take this opportunity to express our comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 - published in *Pennsylvania Bulletin*, March 4, 2000).

In general, the PICPA supports the provisions of the proposed regulation, with the exception of Paragraph (g). The PICPA does not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the American Institute of CPAs or PICPA Rules of Conduct regarding receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. We believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee, or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.

Under paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standard. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that licensee at a competitive disadvantage compared with licensees around the country. In the ever shrinking world of electronic commerce, to link two

separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

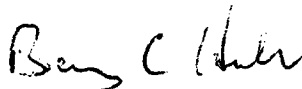
Apart from the undesirability of this provision based upon considerations of ambiguity, economics, and conflict with ethical rules of conduct, there is a fundamental legal problem with proposed Paragraph (g). Simply stated, the Board lacks authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12(p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12(p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application of the statute beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

The PICPA strongly suggests that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this regulation. We have previously offered to meet with the State Board to discuss this matter, and we reiterate our offer. If we can be of further assistance, please feel free to contact me or Mr. Michael Colgan of the PICPA.

Sincerely,



Barry C. Huber
Certified Public Accountant

pc: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission

IRRC # 2101 Title Commissions & Referral Fees

(Form F)

NAME	ADDRESS	DATE of CORRESPONDENCE
Barry C. Huber	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Stephen D. Kahler	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Michael J. Piascinski	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Douglas L. Smith	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Judith L. Hoar	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Patricia H. Herr	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Margaret L. Veltra	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Brian D. Wassell	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Donald F. Johnson, Jr.	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
David T. Fritz, Sr.	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>
Douglas F. Deihm	1705 Oregon Pike Lancaster, PA 17601	<u>March 17, 2000</u>



Pennsylvania Society of Public Accountants

Executive Office • 900 North Second Street • Harrisburg, PA 17102
 1(800) 270-3352 • (717) 234-4129 • FAX (717) 234-9556
 www.pspa-state.org

2000 APR -5 PM 3:53

APR 4, 2000

Mr. Steven Wennberg, Esq.
 State Board of Accountancy
 P. O. Box 2649
 Harrisburg, PA 17105-2649

Dear Mr. Wennberg:

These comments are being submitted in response to the proposed regulations published in the Pennsylvania Bulletin, Vol 30, No. 10, March 4, 2000, regarding commissions and referral fees.

1. Description of Amendments- Cooperation with Peer Reviewers.

This section indicates, "A licensee who sells commission-based products or services to attest clients will not receive an unqualified peer review report."

It is unclear whether this section will prevent a licensee who is performing a compilation report for a client, and who accepts a commission from that client for the sale of a product or service, from receiving an unqualified peer review report.

According to the CPA Law – Act 140, compilations are by definition, a part of the attest function. Section 12(p)(1) of the CPA Law prohibits the acceptance of commissions if a licensee is performing compilations for a client only when there is no disclosure of a lack of independence provided to the client. Additional clarity is needed to ensure that those licensees who are complying with the provisions set forth in Act 140 regarding commissions may still receive an unqualified peer review report.

2. (f) Workpapers

It is unclear as to the type and nature of what will be considered acceptable workpapers. Various paperwork is already required by the broker-dealer, and NASD, which provide substantiation for the licensee's professional judgment, but is unclear whether this documentation would be acceptable to meet this requirement. Additional clarity is needed.

FROM THE OFFICE OF THE

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3. Significant Influence

"Significant influence" is not a part of the CPA Law -- Act 140, and the necessity for this section is unclear. In addition, the section is ambiguous as it defines only a few situations in which a licensee would be in violation.

Is the Board aware of historical data and/or incidents that occurred since the passage of the CPA Law that have necessitated this section? Additional rationale for including this section in the regulations should be given.

PSPA's position is that items that were not a part of the CPA Law - Act 140, should not be included in the regulations unless they are clearly necessary to the implementation of the law, particularly those that place additional, unfamiliar burdens on licensees. Due to the unfamiliarity licensees have with "significant influence" and the ambiguous language proposed in the regulations, there will undoubtedly be confusion and compliance problems.

Sincerely,



Mary Lew Kehm, CPA
President



Original: 2101
 Bush
 cc: Sandusky, de Bine, Jewett, Legal

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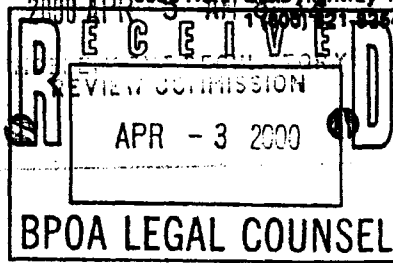
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April 3, 2000

Steven Wennberg, Esq.
 State Board of Accountancy
 P.O. Box 2649
 Harrisburg, PA 17105-2649



Re: Proposed Rulemaking: Amendment of § 11.24 (relating to commissions)

Dear Mr. Wennberg:

On behalf of H.D. Vest, Inc. ("H.D. Vest"), I am pleased to submit comments on the State Board of Accountancy's ("Board") proposed amendment of section 11.24 of Pennsylvania Code Title 49, relating to the receipt of commissions by CPAs. See Pennsylvania Bulletin, Vol. 30, No. 10, at 1271-1273 (Mar. 4, 2000).

For the reasons set forth below, we believe that proposed sections 11.24(f) and (g) exceed the scope of the Board's regulatory authority. Moreover, proposed section 11.24(g) is inconsistent with the plain language of the CPA Law which entitles CPAs to receive commission-based compensation from all but their attest clients. Accordingly, H.D. Vest respectfully but strongly urges the Board to delete those provisions from its proposed amendments.

A. Background

The Pennsylvania legislature amended the CPA Law in 1996. See P.L. 851, No. 140 (codified at 63 P.S. § 9.1 et seq.). Among other things, the 1996 amendments expressly permit CPAs in public practice to receive commissions for recommending to a client any product or service, so long as the CPA or his firm does not perform certain attest activities for that client. See 63 P.S. § 9.12(p)(1).^{1/}

A CPA permitted to receive commissions under the statute is only required to disclose to any relevant client the fact that the CPA receives or expects to receive a commission based on the recommendation of a product or service. See 63 P.S. § 9.12(p)(2). In addition, the statute charges the State Board of Accountancy with promulgating regulations to govern the form and manner of the required disclosure, subject to several minimum conditions. See 63 P.S. § 9.12(p)(4) (discussed further in part B., *infra*). Pursuant to this charge, the Board proposed the amendments to section 11.24 on which we comment today.

^{1/} The specific attest activities that trigger the commissions prohibition are as follows: (i) an audit or review of a financial statement; (ii) a compilation of a financial statement (if the CPA expects or reasonably might expect a third party to use the financial statement and the report does not disclose a lack of independence); and (iii) an examination of prospective financial information.

See 63 P.S. § 9.12(p)(1)(i)-(iii).

Securities Offered Through
 H.D. VEST INVESTMENT SECURITIES, INC., Member



Steven Wennberg, Esq.
April 3, 2000
Page 2

§ 9.12(p)(4) (discussed further in part B., *infra*). Pursuant to this charge, the Board proposed the amendments to section 11.24 on which we comment today.

B. Proposed Section 11.24(f) Exceeds the Scope of the Board's Authority

The Board's general rulemaking authority derives entirely from the CPA Law. See 63 P.S. §§ 9.2c, 9.3 (establishing Board and defining scope of Board's powers). As such, the Board may promulgate rules regulating the practice of public accounting only to the extent that the Pennsylvania legislature has delegated the particular authority to the Board to do so. Confirming the limited scope of the Board's authority, the legislature has specifically admonished the Board to "adopt, promulgate, and enforce" rules that are "not inconsistent" with the CPA Law. 63 P.S. § 9.3(12) (emphasis added). To be sure, the Board has broad power to regulate various aspects of the practice of public accounting, see generally 63 P.S. § 9.3, but that power is always subject to applicable limitations set forth in the organic statutory language.

With respect to the receipt of commissions by CPAs, the legislature has provided clear and specific guidance as to the nature of the regulations the Board may adopt. Section 12(p)(4) of the CPA Law directs the Board to "promulgate regulations specifying the terms of the disclosures required by [the statute], the manner in which the disclosures shall be made, and such other matters regarding the disclosures as the board shall deem appropriate." 63 P.S. § 9.12(p)(4) (emphasis added).^{2/} The authority delegated to the Board in § 9.12(p)(4) thus extends only to regulations relating directly to the disclosures required by the CPA Law. Although the Board retains some discretion to determine what if any other rules may be "appropriate," such rules must relate to the disclosures. See *id.*

Proposed section 11.24(f) exceeds the limited scope of the Board's authority. Section 11.24(f) would require CPAs who receive commissions to "maintain workpapers that document discussions regarding the client's investment needs, the investment strategies considered, and the basis for the investment strategy recommended by the licensee." Pennsylvania Bulletin, Vol. 30, No. 10, at 1273 (emphasis added). This requirement plainly does not relate to disclosures. Instead, it relates, at bottom, to the appropriateness of the client's underlying investment. The only thing the Board could hope to learn from these workpapers – if what the

^{2/} The legislature further mandated that the regulations require, at a minimum, that a disclosure be in writing, that it be clear and conspicuous, that it state the amount of the commission or the basis for computing it, and that it be made at or before the time the relevant product or service is recommended. See 63 P.S. § 9.12(p)(4)(i)-(iii).

Steven Weinberg, Esq.

April 3, 2000

Page 3

Board seeks is access to those workpapers – is the substance of the discussions between the CPA and his client regarding financial planning and investment strategies. However, it is clear from the statutory language of 12(p) that the legislature is concerned only with ensuring that procedural rules regarding disclosure are followed. The legislature simply has not given the Board authority to inquire into the substance of CPA-client conversations relating to investments and investment strategies.

In fact, the purpose of proposed section 11.24(f) is not entirely clear. To the extent the Board simply seeks to require CPAs who receive commissions to maintain workpapers related to the underlying commission-yielding transactions, the requirement exceeds the Board's authority, as set forth above. Moreover, such requirements already exist in the form of state and federal securities regulations, with which many CPAs who receive commissions already must comply. To the extent the Board further seeks to be able to verify that CPAs are in fact maintaining the specified workpapers, again, the proposed regulation exceeds the Board's authority. Both of these purposes impermissibly implicate the substance of the investment advice offered by the CPA to his clients.

However, if what the Board seeks to do is verify that CPAs are complying with the procedural requirements for disclosure as set forth in the statute and the Board's implementing regulations, see, e.g., proposed section 11.24(e) (requiring that disclosure occur in engagement or representation letter signed by client), there are other, permissible means available to achieve this end. For example, the Board could require CPAs who receive commissions to maintain files containing the required disclosures. Unlike section 11.24(f), such a requirement would appear to fall within the legislature's specific grant of authority to the Board for regulating disclosure-related matters. See 63 P.S. § 9.12(p)(4).

C. Proposed Section 11.24(g) Also Exceeds the Scope of the Board's Authority and Is Further Inconsistent with the CPA Law's Plain Language

Proposed Section 11.24(g) also raises issues with respect to the scope of the Board's authority. This provision would prohibit CPAs from receiving commissions for recommending a product or service not only to an attest client, see 63 P.S. § 9.12(p)(1)(i)-(iii), but also to any "individual or entity that can exercise significant influence over the operating, financial or accounting policies" of that attest client. Pennsylvania Bulletin, Vol. 30, No. 10, at 1273 (emphasis added).

Again, this proposed amendment exceeds the scope of the Board's authority. As set forth above, the Board's authority to promulgate regulations in this context extends only to regulations relating to disclosures. See § 9.12(p)(4). Section 11.24(g) has nothing to do with disclosures. Rather, this provision relates to the class of persons from whom CPAs may or may not receive commission-based compensation.

Moreover, section 11.24(g) is fatally inconsistent with the plain language of the CPA Law which prohibits the receipt of commissions by CPAs only under limited circumstances. As set forth above, the CPA Law expressly permits CPAs to receive commissions for recommending to a

Steven Wennberg, Esq.
April 3, 2000
Page 4

client any product or service, as long as the CPA or his firm does not perform specified attest activities for that client. See 63 P.S. § 9.12(p). Section 11.24(g) would expand the scope of the statutory exception to restrict the receipt of commissions even further. This expansion is in contravention of explicit legislative intent that commission-based compensation be prohibited only for attest clients. It is axiomatic that an administrative agency may not exceed the boundaries of its authority to legislate where the legislature has chosen not to regulate.

In addition, proposed section 11.24(g)'s "significant influence" standard is vague and unworkable. Whereas the statute is clear and workable – permitting commission-based compensation from all but a CPA's attest clients – the Board's proposed rule would require CPAs to engage in cumbersome case-by-case determinations of whether each new investment client can exercise "significant influence" over one of the CPA's existing attest clients; for example, a CPA must decide whether an individual holds a "policymaking" position. Proposed section 11.24(g) lacks clear guidelines as to how this provision would be applied by practicing CPAs, and should be deleted for this reason as well.

D. Conclusion

Because proposed sections 11.24(f) and (g) exceed the scope of the Board's authority, and because section 11.24(g) is further inconsistent with the statute, H.D. Vest strongly urges the Board to delete those provisions from its proposed rules relating to commissions. H.D. Vest appreciates the opportunity to submit these comments for the Board's due consideration, and would be happy to provide additional information upon the Board's request. Should you have any questions regarding these comments, please contact Brett Norwood at 800/821-8254.

Sincerely,



Brett Norwood
General Counsel
H.D. Vest

**ELKO
FISCHER
McCABE &
RUDMAN, Ltd.**

Original: 2101
Bush
cc: Sandusky
de Bien
Jewett
Legal

ALBERT L. ELKO
ROBERT F. FISCHER
JOSEPH T. CUNNANE
MICHAEL J. REINKING
JOSEPH J. GLOWACKI
DANIEL C. EMBON
L. STEUART BROWN

ROBERT G. MORLOCK
MICHAEL POZIELLI
GREGORY D. STRATOTTI
LEONARD V. SANTIVASI
ROBERT D. BRIGHT
JOHN J. NIHILL
MARC R. SIMMONS

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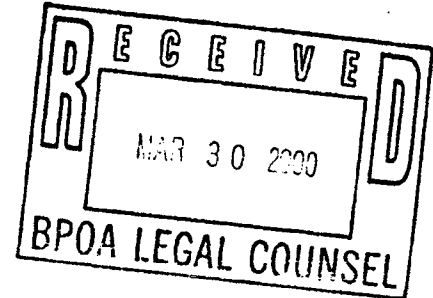
CERTIFIED PUBLIC ACCOUNTANTS

MAR 31 2000

March 28, 2000

INDEPENDENT REGULATORY
REVIEW COMMISSION

Steven Wennberg, Esquire
State Board of Accountancy
P.O. Box 2649
Harrisburg, PA 17105-2649



Re: Proposed Commission and Referral Fee Regulations

Dear Mr. Wennberg:

I am writing on behalf of the fourteen shareholders of Elko, Fischer, McCabe & Rudman, Ltd., a CPA firm with offices in Delaware, Chester and Montgomery Counties, Pennsylvania, established almost 40 years ago. We find it unfortunate that the State Board of Accountancy chose the busiest time of the year for CPAs to respond to such an important issue which has been debated for almost two years.

We are in full agreement with the comment letter, dated March 13, 2000, from Gary R. Claus, CPA, President of the Pennsylvania Institute of Certified Public Accountants, which outlined significant and important objections to the adoption of the Board's proposed regulations on receipt of commissions and referral fees.

From our perspective, the restrictive language, particularly in Paragraph g, imposes severe hardships not only on CPAs, but also on clients who wish to avail themselves of the opportunity to seek alternative professional financial services advice and implementation of their financial plans.

For years, our clients have requested that we advise and assist them with their investment and insurance needs. In the past, we were forced to send clients to brokers and insurance agents who often did not have the ability to understand their overall financial and tax status and, more importantly, did not have a trusted relationship established with them. Our clients have repeatedly told us of their dissatisfaction with the advice and attention provided by these advisors. Fortunately, the accounting profession recognized our clients' concerns and regulations throughout the country were adopted to allow us to become licensed advisors and to directly provide a variety of financial services.

The proposed rules of the State Board of Accountancy, if enacted, will cause us to revert back to the former approach of turning many of our clients away and back to advisors who have demonstrated that they either do not promote our clients' interests or do not have the technical competence to advise them properly.

Many of our potential financial services clients are small business owners for whom we prepare compilations or reviews for their businesses. These business owners often have special tax, estate and retirement planning needs. We are in a position to recognize these issues and effect solutions more capably than outside advisors. The Board's proposed rules effectively limit our role in this process.

Steven Wennberg, Esquire
State Board of Accountancy
March 22, 2000
Page two

The prohibitions stated in Paragraph g are not found in regulations for other services that CPAs provide. For example, the receipt of fees for the performance of management consulting or information technology engagements by CPAs for attest clients is not restricted or deemed to be in violation of independence rules. Despite the fact that these consulting services may result in significant revenues to CPAs, the Board has decided that only commission revenues from investment or insurance activities should be regulated.

It appears that the Board has adopted a position which is in conflict with the majority of the profession. Both the American Institute and State Societies of CPAs throughout the country do not find a conflict between the receipt of commissions and independence rules. The AICPA carefully studied and addressed its position on commissions and referral fees in Ethics section 503 in 1990. This rule does not prohibit the receipt of commissions and referral fees for financial services rendered to individuals who are owners or employees of attest engagement clients. In addition, of the 40 states which permit CPAs to receive commissions and referral fees, we are not aware that any other State Board of Accountancy has taken such a restrictive position.

In effect, the Pennsylvania State Board of Accountancy has decided that CPAs are to be automatically presumed guilty of violating independence rules when receiving commissions from owners and others who exercise "significant influence" over businesses for whom we conduct attest services. It is unfortunate that our ethics should be questioned and dismissed so easily.

We strongly urge the Board to reconsider Paragraph g of its proposed regulation and allow CPAs to perform important services, that they are often best suited to provide, on a competitive basis with non-CPAs who are frequently less qualified.

We would be pleased to meet and further discuss the concerns and issues outlined in our letter. Please feel free to contact me or any of the shareholders of our firm.

Sincerely,

ELKO, FISCHER, McCABE & RUDMAN, Ltd.

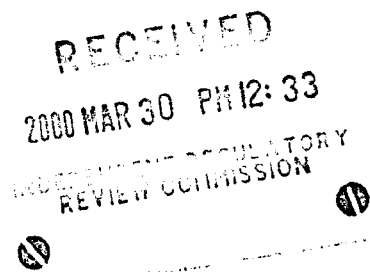


MARC R. SIMMONS, CPA, CFP

MRS:fet

cc: State Representative William Adolph
State Representative Stephen Barrar
State Senator Clarence Bell
State Representative Mario J. Civera
Gary R. Claus, President PICPA
State Representative Mary Ann Dailey
State Senator Stewart J. Greenleaf
State Representative John A. Lawless
State Senator Joseph Loeper
State Representative Ronald C. Raymond
State Representative Matt Ryan
Richard M. Sandusky, Deputy Director for Legislative Analysis

Original: 2101
Bush
cc: Sandusky
de Bien
Jewett
Legal



March 27, 2000

Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P. O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

I am a certified public accountant and licensee in Pennsylvania and take exception to Paragraph (g) of the above-referenced regulation.

I do not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions and believe that Paragraph (g) is vague, ambiguous and conflicts with the ethical rules of conduct of the accounting profession.

If a licensee provides investment advisory services to a shareholder or employee of an attest client and the licensee receives a commission as compensation from the shareholder or employee, it is considered a separate client and a separate engagement. Linking together two separate engagements could pose a difficult interpretive issue since independence is not defined in either the statute or the existing regulations. Existing independence regulations do not refer to commissions and are written to include attest activities only.

Under Paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the lack of a measurement standard. A licensee would not be able to determine how independence might be impaired. Furthermore, a licensee in Pennsylvania will be at a competitive disadvantage with licensees of other states because of the more restrictive standard and regulation.

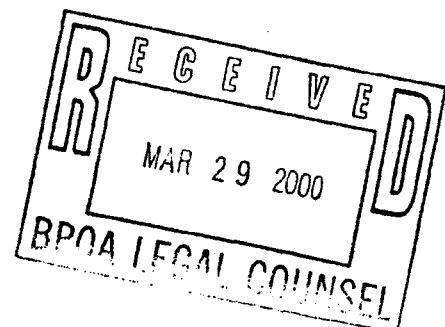
I **strongly urge** that Paragraph (g) be **deleted** from the proposed regulation regarding Commissions and Referral Fees.

Sincerely,

A handwritten signature in cursive script that reads "T. J. Gooch".

Timothy J. Gooch, CPA
cc: Representative Matthew E. Baker

Nancy\wennberg\3\2000



3-28-1000



MATTHEW E. BAKER
MEMBER, 68TH DISTRICT
HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

Dear Mr. Wennberg,

I sincerely hope MR.
Gooch has an issue here
that you will carefully
consider for change.

Thank you! - Rep. Matt
Baker

Original: 2101
Bush
cc: 5 Form Letters
Hoar
Smith
Herr
Veltre
Sandusky, de Bein, Jewett, Legal

TROUT, EBERSOLE & GROFF, LLP
CERTIFIED PUBLIC ACCOUNTANTS

1705 OREGON PIKE
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2000 MAR 27 PM 1:36

REGULATORY
REVIEW COMMISSION

March 17, 2000

Mr. Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Commission and Referral Fee Regulation

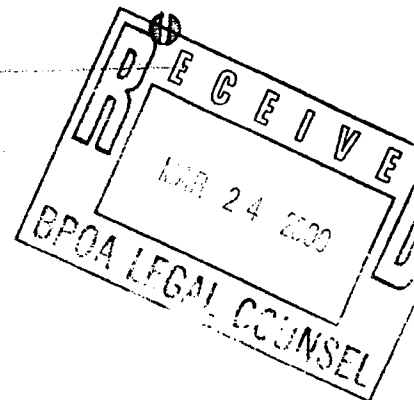
Dear Mr. Wennberg:

On behalf of the 19,000 members of the Pennsylvania Institute of Certified Public Accountants, I would like to take this opportunity to express our comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 - published in *Pennsylvania Bulletin*, March 4, 2000).

In general, the PICPA supports the provisions of the proposed regulation, with the exception of Paragraph (g). The PICPA does not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the American Institute of CPAs or PICPA Rules of Conduct regarding receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. We believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee, or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.

Under paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standard. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that licensee at a competitive disadvantage compared with licensees around the country. In the ever shrinking world of electronic commerce, to link two



separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

Apart from the undesirability of this provision based upon considerations of ambiguity, economics, and conflict with ethical rules of conduct, there is a fundamental legal problem with proposed Paragraph (g). Simply stated, the Board lacks authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12(p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12(p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application of the statute beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

The PICPA strongly suggests that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this regulation. We have previously offered to meet with the State Board to discuss this matter, and we reiterate our offer. If we can be of further assistance, please feel free to contact me or Mr. Michael Colgan of the PICPA.

Sincerely,



Michael J. Piasecinski
Certified Public Accountant

pc: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission

Original: 2101
Bush
cc:

Frank P. Orlando, CPA

Sandusky, de Bien, Jewett, Legal

Steven Wennberg, Esquire
State Board of Accountancy
P. O. Box 2649
Harrisburg, Pennsylvania 17105-2649

RE: Proposed Commissions and Referral Fees Regulations

Dear Attorney Wennberg:

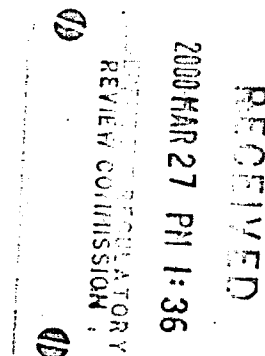
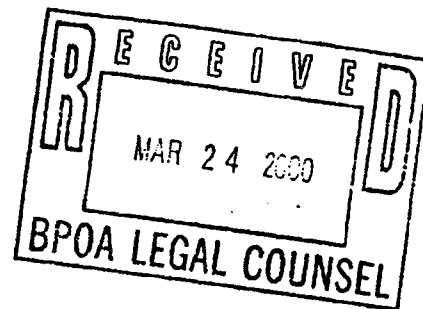
I am in receipt of the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 – published in the Pennsylvania Bulletin, March 4, 2000).

I want to express my significant concern with Subsection (g) that bars Pennsylvania CPA's (but not the CPA's from any other state) from receiving a commission for selling, recommending or referring a product or service to an individual or entity that can exercise "Significant influence" over an attest client.

While the AICPA and, I believe almost 49 other states, have found that this restriction is not necessary to protect our appearance of independence, the Board's lone position of finding a need to protect our appearance of independence by making Pennsylvanians less competitive than CPA's from all other states is both troublesome and very disappointing.

One must surely question whether this is in the best interest of Pennsylvanians (small businesses and their owners) or the workings of a few individuals who "know best".

March 22, 2000



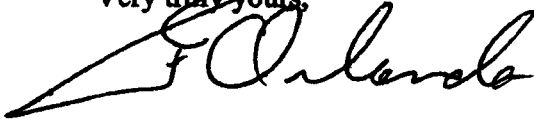
Steven Wennberg, Esquire
March 22, 2000
Page 2

One must also questions whether this is in the best interest of hard-working Pennsylvania CPA's.

Why must Pennsylvania be so obstinate in the face of what the rest of our country has laid down as the rules for operating?

I humbly beseech the Board to reconsider the "Significant Influence" restrictions of Subsection (g) and permit us to serve our clients and provide them the products and services they want to receive from their "Trusted Advisors".

Very truly yours,

A handwritten signature in black ink, appearing to read "F. Orlando", written in a cursive style.

Frank P. Orlando, CPA

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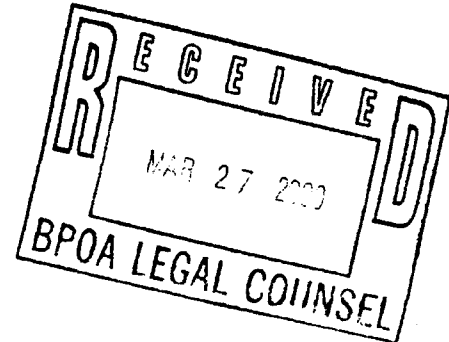
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cc: Sandusky
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Mr. Steven Wennberg, Esquire
State Board of Accountancy
P.O. Box 2649
Harrisburg, PA 17105-2649

**RE: State Board of Accountancy [49 PA. CODE CH. 11]
Proposed Regulations on Commissions and Referral Fees**

Dear Mr. Wennberg,

This letter is in response to the proposed amendments that were published in the PA Bulletin, Volume 30, No. 10 on March 4, 2000.

My concerns are related to Subsection (g) of the proposed regulations that indicate a licensee who performs an attest activity for a client may not receive a commission for recommending or referring a product or services to an individual or entity that can exercise "significant influence" over the client's operating, financial and accounting policies.

This section of the proposed regs, as written, is in conflict with the current AICPA and PICPA rules of conduct regarding the acceptance of commissions for services rendered to a client for whom no attest service is being performed.

This provision is also in conflict with the current changes taking place in our profession. Our clients are requesting, and in some cases demanding, that we be able to be a "full service" provider of all their tax, accounting and financial needs. This proposed regulation will clearly put the CPA profession within the Commonwealth of PA at a competitive disadvantage with other CPAs in surrounding states as well as the entire investment and financial services industry.

I am assuming that most of the board members of the PA Board of Accountancy are practicing CPAs. If their clients are like our clients, the client is asking their CPA to provide these additional financial services for them. The client trusts us and feels comfortable with our recommendations knowing that we have their best interests in mind.

March 22, 2000
Steven Wennberg, Esq.
Page Two

The proposed regulations contain an example where a licensee has a two-member partnership as an attest client. If the licensee receives a commission on the sale of a product or services to a non-attest client that is a 50% partner in the partnership. The Board believes the receipt of the commission would have an adverse impact on the licensee's independence with respect to the attest client partnership. What if the licensee provides estate planning to one of the 50% partners in the partnership? As part of the estate planning the buy-sell agreements between the two partners is reviewed. It is determined by the partners and their attorney, as well as their CPA that life insurance is needed to fund the buy-sell agreement. The client wants to purchase this life insurance. The client wants his CPA to provide the life insurance product in order to implement the buy-sell agreement. Your proposed regulations would prevent the CPA from providing the life insurance product that the client wants and needs. It will force the client to go elsewhere to obtain the same product. Any situation such as this one where the CPA provides services for the 50% partner and receives a commission would have no impact on the licensee's independence (actual or perceived) with respect to the attest partnership if the CPA acts in the best interest of the individual client as required by the AICPA rules of professional conduct and the licensing agencies such as the NASD, SEC, etc.

The proposed regulations also indicate the board's proposed "significant influence" standard is derived from the AICPA's code of professional conduct's ethical interpretation relating to the effect that a certified public accountant's financial interest in a non-client has on his independence with a client when the non-client has as an investor or investee relationship with the client. We fail to see the connection between the code of professional conduct and an individual client's decision to purchase financial services from a licensed CPA when the individual client is provided the option to purchase those services through the payment of a commission, a management fee or some other fee arrangement, or is also provided the option to purchase those services through other professionals but chooses to have his CPA provide the services. We, as CPAs, are our clients trusted advisors. If the CPA is properly licensed with the Securities and Exchange Commission (SEC), the National Association of Securities Dealers (NASD), or the PA Securities Commission, the CPA is now in the role of a fiduciary for that client in providing financial services. Therefore, the CPA must act in the best interest of the client and as such, we do not see how independence can be impaired, regardless of whether the individual client is the owner of a business entity for which the CPA is providing attest services.

March 22, 2000
Steven Wennberg, Esq.
Page Three

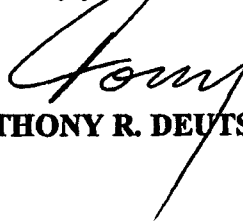
The proposed regulations in Subsection (c), Cooperation with peer reviewers, indicate that a licensee who sells commission-based products or services to attest clients will not receive an unqualified peer review report.

Based on the CPA law Section 12 (p)(1) I am assuming there is an exception for a licensee who issues a financial statement on a compilation basis, and the licensee's compilation report discloses the licensee lacks independence. This appears to be consistent with the other sections of the CPA law. It would be helpful if this point was clarified in the proposed regulations.

With regard to the publishing of the proposed regs on March 4, 2000 the board could have selected a more appropriate time to release these proposed regulations for comment to the PA CPA community. The entire profession who these regulations impact is in the middle of our busiest tax filing season with the March 15th and April 15th deadlines dominating most CPA professional's time and thought process. I certainly hope that the board takes this into account in interpreting the number of comments they receive related to these proposed regulations.

If you have any questions related to my comments or would like to discuss them in greater detail, please feel free to contact me.

Very truly yours,



ANTHONY R. DEUTSCH, CPA

ARD:lcp

cc: Robert A. Oster, CPA
Michael Colgan, PICPA
g:\clients\stratus\Wennberg Comment 03-20-00.doc



RICHARD W. GROVES, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

S

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REVIEW COMMISSION

2000 MAR 23 AM 8:43

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March 18, 2000

Mr. Steven Wennberg, Esq.
State Board of Accountancy
P O Box 2649
Harrisburg, PA 17105-2649

Original: #2101
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Copies: Sandusky
de Bien
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RE: State Board of Accountancy Proposed Regulations Regarding the Receipt of Commissions

Dear Mr. Wennberg:

Having read the proposed regulations regarding the receipt of commissions and a copy of the letter to you by Gary R. Claus, CPA, President, PICPA, dated March 13, 2000, I strongly concur with the stand taken by Mr. Claus. I am opposed to the inclusion of "significant influence" language into the commissions regulations for the reasons stated in the comment letter of Mr. Claus to the State Board.

Very truly yours,

Richard W. Groves
Richard W. Groves, C.P.A.

RWG/mm

Enclosure: Copy of letter dated 3/13/200 from Gary R. Claus, CPA

cc: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor – Harrisstown 2
333 Market Street
Harrisburg, PA 17101

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J. Andrew Weidman

March 13, 2000

Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Commission and Referral Fee Regulation

Dear Mr. Wennberg:

On behalf of the 19,000 members of the Pennsylvania Institute of Certified Public Accountants, I would like to take this opportunity to express our comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 – published in *Pennsylvania Bulletin*, March 4, 2000).

In general, the PICPA supports the provisions of the proposed regulation, with the exception of Paragraph (g). The PICPA does not agree with the imposition of the independence standard of "significant influence" with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the American Institute of CPAs or PICPA Rules of Conduct regarding receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. We believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.

Under paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standard. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that



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Steven Wennberg, Esq.
Page 2

March 13, 2000

licensee at a competitive disadvantage compared with licensees around the country. In the ever shrinking world of electronic commerce, to link two separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

Apart from the undesirability of this provision based upon considerations of ambiguity, economics, and conflict with ethical rules of conduct, there is a fundamental legal problem with proposed Paragraph (g). Simply stated, the Board lacks authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12 (p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12 (p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application of the statute beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

The PICPA strongly suggests that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this regulation. We have previously offered to meet with the State Board to discuss this matter, and we reiterate our offer. If we can be of further assistance, please feel free to contact me or Mr. Michael Colgan of the PICPA.

Sincerely,

Gary R. Claus, CPA
President

C: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor – Harnistown 2
333 Market Street
Harrisburg, PA 17101



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RICHARD W. GROVES, P.C.
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March 18, 2000

Mr. Steven Wennberg, Esq.
State Board of Accountancy
P O Box 2649
Harrisburg, PA 17105-2649

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RWG/mm

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cc: Richard M. Sandusky
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14th Floor – Harristown 2
333 Market Street
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March 13, 2000

Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

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Steven Wennberg, Esq.
Page 2

March 13, 2000

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The PICPA strongly suggests that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

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Sincerely,

Gary R. Claus, CPA
President

C: Richard M. Sandusky
Deputy Director for Legislative Analysis
Independent Regulatory Review Commission
14th Floor - Harrisstown 2
333 Market Street
Harrisburg, PA 17101



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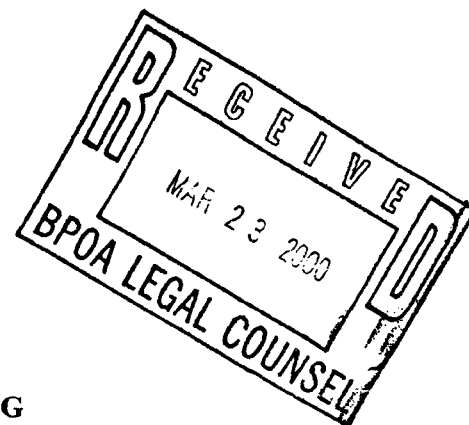
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March 17, 2000

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Steven Wennberg, Esquire
State Board of Accountancy
116 Pine Street
P. O. Box 2649
Harrisburg, PA 17105-2649



**RE: PROPOSED AMENDMENTS TO CPA LAW REGARDING
COMMISSION AND REFERRAL FEE REGULATION**

Dear Mr. Wennberg:

This letter is in response to proposed Amendments by the State Board of Accountancy regarding commissions and referral fees, as published in the Pennsylvania Bulletin, dated March 4, 2000.

In proposed Subsection (c), there is a statement in the Pennsylvania Bulletin indicating that a licensee who sells commission-based products or services to attest clients will not receive an unqualified peer review report. I assume that an exception to this statement would be the situation where a licensee performs a compilation service and discloses his lack of independence in the report letter. I believe this would be consistent with the other Subsections of the Board's proposal; nevertheless, a clarification of that point would be helpful.

Our objection to the proposed Amendments is within Subsection (g). The proposal as written is in conflict with current AICPA and PICPA Rules of conduct regarding the acceptance of a commission for services rendered to a client for whom no attest service is being performed. This provision is also in conflict with the overwhelming movement of the profession towards "full-service" professional services, by putting the CPA profession within Pennsylvania at a competitive disadvantage with licensees in surrounding states, as well as the entire investment industry. Also, the Board indicates that the "significant influence" standard is derived from the AICPA Code of Professional Conduct's Ethical Interpretation relating to the effect that a Certified Public Accountant's financial interest in a non-client has on his independence with a client when the non-client has an investor or investee relationship with the client. I fail to see the link between the Code of Conduct and an individual client decision to purchase financial services from a Certified Public Accountant when the individual is provided the option to purchase those services through the payment of commission, a management fee, or some other fee arrangement. As long as the individual client has the option, I do not see how independence can be impaired, regardless of whether the individual client is the owner of a business entity for which the Certified Public Accountant is providing attest services. The link just does not exist.

Steven Wennberg, Esquire
State Board of Accountancy
March 17, 2000
Page Two

Assuming Subsection (g) is eliminated, Subsection (e) would seem unnecessary. The disclosures of the fee arrangement should be with the owner of the business entity and not the entity itself.

My only other observation is that the Board could not have selected a more inopportune time to release these proposed Regulations for comment. The entire profession is in the middle of tax filing season, with two significant due dates, March and April 15th, dominating most professionals time and thought process. I only hope the Board feels they have received enough feedback on these matters to make an informed decision going forward.

I appreciate the opportunity to provide this response to the proposed Amendments. If you would like to discuss this matter further, or have any questions regarding my response, please feel free to contact me.

Very truly yours,



ROBERT A. OSTER, CPA
MANAGING SHAREHOLDER

RAO/jek

cc: Anthony R. Deutsch, CPA
Michael Colgan, PICPA

KIMMEL, LORAH + ASSOCIATES LLP
Certified Public Accountants

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Kelly L. Moono, CPA
Robert E. Hartzell, CPA
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March 17, 2000
Norristown, Pennsylvania

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Steven Wennberg, Esq.
State Board of Accountancy
116 Pine Street
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Proposed Commission and Referral Fee Regulation

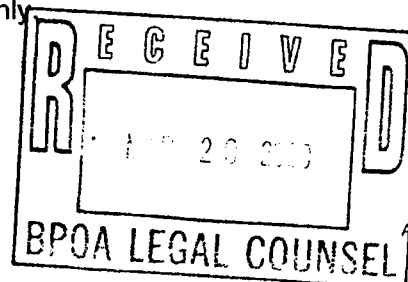
Dear Mr. Wennberg:

I would like to take this opportunity, as a licensed CPA in Pennsylvania, to express my comments regarding the proposed regulations of the State Board of Accountancy regarding Commissions and Referral Fees (Section 11.24 - published in Pennsylvania Bulletin, March 4, 2000).

I strongly believe that the CPA law in Pennsylvania should conform to the ethics of the profession on a national basis, as promulgated by the American Institute of Certified Public Accountants. Placing more restrictive provisions on Pennsylvania CPAs places them in an unfair competitive disadvantage with CPAs in other states. The country and the CPA profession, as a whole, are adapting to meet the needs of our ever changing society. The CPA profession in Pennsylvania must be allowed to keep up with the changing socioeconomic environment, in order to better serve Pennsylvanians.

I do not agree with the imposition of the independence standards of "significant influence", in Paragraph (g), with respect to the receipt of commissions. Paragraph (g) is ambiguous and vague at best. Neither the American Institute of CPAs or PICPA Rules of Conduct regarding receipt of commissions are linked to the independence rules, unless the licensee is providing an attestation service to the client. I believe that the public interest would be better served by a regulation that is not in conflict with the ethical rules of conduct of the accounting profession.

If a licensee provides investment services to a shareholder or employee of an attest client, or to an employee benefit plan sponsored by an attest client, and the licensee receives a commission as compensation from that shareholder, employee or a third party, it is considered a separate client and a separate engagement. To link together the two separate engagements could pose a difficult interpretive and perhaps legal issue for the State Board as independence is not defined in either the statute or the existing regulations. In fact, the existing independence regulations do not refer to commissions, and are written to include attest activities only.



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Steven Wennberg, Esq.
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Under paragraph (g) of the proposed regulation, a licensee would be at risk because of the vagueness of the language and the fact that nowhere in the independence rules is there a reference to receipt of commissions. A licensee would not be able to determine how independence might be impaired because there is no measurement standards. In addition, a licensee in Pennsylvania would be held to a more-restrictive standard/regulation than in other states, placing that licensee at a competitive disadvantage compared with licensees around the country. In the ever shrinking world of electronic commerce, to link two separate engagements in order to prohibit a CPA from receiving a commission would be unfair to Pennsylvania licensees.

Apart from the undesirability of this provision based upon considerations of ambiguity, economics, and conflict with ethical rules of conduct, there is a fundamental legal problem with proposed Paragraph (g). Simply stated, the Board lacks authority to adopt this regulation for two reasons: (1) Paragraph (g) is inconsistent with the clear language of the statute; and (2) it exceeds the legislative delegation of power to implement regulations. Section 9.12 (p)(1) of the CPA Law refers specifically to "a client". It does not refer to some other person or entity having some position of influence with the client. Further, Section 9.12 (p)(4) of the statute expressly provides that the Board's power to promulgate regulations shall be limited to disclosure matters. It does not confer power to expand this application of the statute beyond clients.

It is a fundamental proposition of administrative law that an agency's delegated power to adopt regulations is not to make law, but rather to carry into effect the will of the legislature.

I strongly recommend that Paragraph (g) be deleted from the proposed regulation regarding Commissions and Referral Fees.

Thank you for the opportunity to provide these comments to the State Board regarding this regulation.

Very truly yours,



Of Kimmel, Lorah + Associates LLP

Barry W. Fry, CPA

cc: Richard M. Sandusky
Deputy Director for Legislative Analysis
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