

# The Trusted Professional

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## State Board Votes on Accountancy Reform Draft Regulations

### Proposals Reshape Practice of Public Accountancy in N.Y.

By COLLEEN LUTOLF  
Trusted Professional Staff

NEW YORK—The accountancy reform bill signed into law on Jan. 27 introduced sweeping changes to the practice of public

accountancy in New York state, but what remains a question mark for all CPAs is how the new statutory language will be interpreted through regulations.

NYSSCPA Past President **George T. Foundotos** said recently after hearing that  
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## Society Submits Comments on SEC's IFRS Roadmap

By COLLEEN LUTOLF  
Trusted Professional Staff

NEW YORK—One might be hard pressed to find a CPA who would be opposed to a single set of high-quality, global accounting standards so that everyone—CPAs,

investors, analysts, journalists, CFOs—could easily compare the financial health of companies across every industry throughout the world.

But as the NYSSCPA pointed out in its comment letter to the Securities and Exchange Commission (SEC) regarding a

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## FASB Relaxes Fair Value Rules

By MELISSA HOFFMANN LAJARA  
Trusted Professional Staff

NORWALK—The Financial Accounting Standards Board (FASB) voted unanimously April 2 to provide companies with more flexibility in valuing illiquid assets that may have long-term value, according to FASB spokesman Neil McGarity.

The new guidance, which the *Wall Street Journal* said is expected to boost bank operating profits when they report first-quarter results later this month, allows banks and their auditors to use “significant judgment” when valuing the illiquid assets such as mortgage securities.

A second proposal from the FASB, regarding other-than-temporary impairments, was also approved, in a 3-2 vote, McGarity said.

The board also redeliberated proposed FASB Staff Position (FSP) Financial Accounting Standards (FAS) 107-b and APB 28-a, *Interim Disclosures about Fair Value of Financial Instruments*, in light of comments received and decided to proceed to a final FSP. The final FSP will amend FASB Statement No. 107, *Disclosures about Fair Value of Financial Instruments*, to require an entity to provide disclosures about fair value of financial instruments in interim financial information.

The FASB released the first two staff  
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## Taking Notes



From left, Olga Yavorsky and Mihaela Dumitriu, new to the profession and both prospective NYSSCPA members, learn what the new accountancy reform law will mean for them. See story on page 11.

## Madoff Auditor Charged

By MELISSA HOFFMANN LAJARA  
Trusted Professional Staff

NEW YORK—Bernard L. Madoff’s long-time auditor, David G. Friehling, is the first person besides Madoff to be charged in connection with the convicted fraudster’s estimated \$65 billion scam.

Friehling, Madoff’s accountant for more than a decade, was charged in a six-count criminal complaint that accused him of one count each of securities and investment adviser fraud and four of making false filings to the Securities and Exchange Commission (SEC) from the early 1990s to the present. He was released March 18 on \$2.5 million bail. If convicted, he faces a maximum of 105 years in prison.

A former Rockland Chapter president of the NYSSCPA, Friehling was expelled from the NYSSCPA and the AICPA through a joint action for violating NYSSCPA Rule 506 of the Code of Professional Conduct and the AICPA’s bylaw section 7.4.6, for failing to cooperate with a disciplinary investigation of his alleged misconduct.

Friehling, 49, is one-half of Friehling & Horowitz, the small New City CPA firm that was also charged in the complaint, and is not accused of knowing about Madoff’s fraud, according to authorities. Rather, the criminal complaint alleges that Friehling enabled Madoff’s Ponzi scheme by falsely stating in annual audit reports that Friehling & Horowitz audited Madoff’s financial statements pursuant to generally accepted auditing standards, including the requirements to maintain auditor independence



David G. Friehling

and perform audit procedures regarding custody of securities.

He was also charged by the SEC in a civil complaint seeking a permanent injunction, the return of “ill-gotten gains,” and the issuance of civil penalties.

Madoff pleaded guilty March 12 to securities fraud, investment adviser fraud, mail fraud, wire fraud, two counts of international money laundering, money laundering, false statements, perjury, false filings with the SEC and theft from an employee benefit plan.

The criminal complaint from the U.S. Attorney Southern District of New York claims that Friehling did not conduct any audit procedures with respect to internal controls, and had no basis to represent that the company had no material inadequacies.

Keith D. Kelly—an FBI special agent who earned a CPA license and began his career in accounting—investigated Friehling’s audits of Bernard L. Madoff Investment Securities LLC (BMIS) and detailed the basis for the charges Friehling now faces in an eight-page criminal complaint.

Friehling is charged with one count of securities fraud for allegedly “employing

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### Chapter Newsletters

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# State Board Votes on Accountancy Reform Draft Regulations

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the accountancy reform bill the Society spent a decade advocating for had become law: "Now the real work begins."

That work continued in earnest during a March 27 New York State Board for Public Accountancy meeting where the board's Executive Secretary **Daniel J. Dustin** presented 13 board members with 13 sections of proposed regulations that, if approved by the Board of Regents during its May meeting, will change the way CPAs practice their profession in New York.

Before the proceedings began, board Chairman **John C. Olsen** reminded board members, who were scattered in three locations throughout the state (the meeting was held via webcam with access locations in Albany, Rochester and Manhattan), that the State Board is an advisory board to the Regents, "so our purpose today is to advise; not necessarily make final conclusions or decisions."

Although the board serves only in an advisory capacity to the Regents—the state's supervising authority over the public accountancy profession—the 15 votes taken during the meeting serve as official recommendations to the Regents of the various draft proposals drawn up by Dustin and his staff, who also received input from the NYSSCPA and the Accountants Coalition, which advocates for the interests of larger accounting firms.

The draft proposal will also be subject to review by the Counsel's office of the State Education Department (SED), before being presented to the Board of Regents in May, Dustin said. Proposed rules are subject to a 45-day public comment period upon being proposed by the Regents in the State Register. Given the need to have regulations in place by the new law's July 26 effective date, it is anticipated that the rules will be adopted on an emergency basis by the Regents and that during the emergency period there will be a public comment period for permanent adoption. Dustin expects final action to take place sometime in October.

"There's plenty of time to correct things," Dustin said. "Our goal is to get them as correct as we can so there are minimal changes going forward."

## Experience Requirement

One question many CPAs are asking when they hear about the accountancy reform law is whether New York state's experience requirements for licensure will now mirror the state's newly expanded scope of practice. Under the new law, any CPA performing accounting, tax, financial or management advisory services or any CPA in industry, government or academia is now considered to be practicing public accountancy.

If the draft regulations are adopted by the Regents, the scope of experience will expand to match the expanded scope of practice.

"Acceptable experience shall mean providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills under the direct supervision of a [CPA] licensed in the United States or a public accountant licensed in New York," according to the proposed regulations. They go further: If the regulations are adopted, experience may also be gained through employment in public practice, government, industry or academia.

One year of experience would allow CPA candidates to meet the experience requirement, according to the draft regulations. One year is defined in the proposal as 12 calendar—not necessarily consecutive—months of full-time employment. Full-time employment is defined as a five-day, 35- to 40-hour week, excluding overtime. Part-timers may also meet their experience requirements by working no less than 20 hours per week on the basis of one week of experience for every two weeks worked, according to the draft regulations.

CPA candidates may earn their experience requirement before or after they take the CPA exam, according to the draft regulations, however, there was some debate during the board meeting regarding how long after the exam candidates should have to fulfill the experience requirement and, if they don't meet it, how much continuing professional education (CPE) they'd be required to take.

"If everything they do—tax preparation, accounting and auditing—are both going to be counted, then we should narrow the timeframe so we don't have someone working one month a year for 10 years or 12 years," said **Henry Krostich**, who participated in the discussion from Manhattan.

Most other board members disagreed and felt CPA candidates should have 10 years to earn their experience requirement. If the candidate earned one year of experience after 10 years, State Board members proposed that candidates should be required to take 40 hours of CPE, but not before they considered stricter requirements, such as having to retake the CPA exam or earning 80 hours of CPE over two years.

"I think 10 years is a very long time," said board member **Jack Laschenski**, who was attending the meeting from Rochester. "Frankly, you [should] reset the clock, take the exam again and start over, to make the license meaningful."

"You can pass the exam by studying a book, Jack," shot back board member **Richard Isserman**, attending in Manhattan. "It's fairly easy to do. The exam doesn't bring you up to speed."

Isserman said he supported giving CPA candidates 10 years after taking the exam to fulfill their one-year experience requirement, not five years.

"A tax season tax preparer working at a CPA firm over a five-year period will get

sufficient requirements without touching a work paper," Krostich said, adding that he had a problem with someone sitting for the exam at age 22, but waiting until age 50 to fulfill the experience requirement.

The board voted 11-2 to allow CPA candidates 10 years to meet their experience requirement after taking the exam; if the experience requirement is met 10 years after taking the CPA exam, candidates would have to take 40 hours of CPE. Krostich and board member Dena G. Williams opposed the measure.

The board also unanimously voted to accept the proposed scope of experience, and to maintain the board requirement that it would only accept foreign experience earned in a foreign country if it was supervised and approved by a U.S. CPA.

Further discussion on experience arose when the board deliberated competency requirements. Dustin had proposed that competency to supervise attest or compilation services or to sign or authorize someone to sign the accountant's report on behalf of a firm be defined as "no less than two years' experience within the last 10 years in the preparation of financial statements or reports on financial statements gained through employment in government, industry, academia or public practice."

Krostich and board member **Robert L. Gray** opposed the time frames set in the proposal.

"You can do something outside attest and compilation for eight years and say, 'Now I'm competent,'" Krostich said.

"I weigh in strongly for three and five [years, respectively]," Gray said. "For the scope of practice, this is the change we have to make to ensure we are doing something to talk about the quality of audits and the control procedure."

Although some members seemed to agree with Gray—that one year of financial statement preparation experience was not enough to be competent—once Krostich proposed the experience requirement for supervising attest and compilation services or signing or authorizing someone to sign the accountant's report on the financial statements on behalf of the firm, and that it be measured in hours rather than years, those same members agreed with Krostich, saying they thought 1,000 hours or 125 days of eight-hour full-time employment within a five-year period was sufficient to meet competency requirements when supervising attest or compilation services.

"I think 1,000 hours would make sense," said Olsen. "It's directly related to audit, attest and compilation engagements. It would not include doing 1040s during the busy season. That concentration is a decent amount of concentration."

The board approved that draft proposal, 10-3, to set the requirement for supervising attest or compilation services or signing or authorizing someone to sign the account-

ant's report on the financial statements on behalf of the firm, to 1,000 hours of experience in five years in preparing financial statements or reports on financial statements gained through employment in government, industry, academia or public practice; and having no less than 40 hours of CPE in accounting, auditing or attest during the three years immediately prior to performing that service.

## CPE

According to the new law, the CPE reporting year is now based on a calendar year, and the draft regulation would allow registered CPAs to carry over CPE earned within the last four months of 2008 into the Jan. 1, 2009 through Dec. 31, 2009 reporting year.

Other than what is historically offered as CPE concentrations—accounting, auditing, taxation—the new law expands concentrations to advisory services and specialized knowledge and applications related to specialized industries. The draft regulations also include attest and "professional ethics and such other areas related to the practice of accounting as may be acceptable to the department," however, what those additional applications might be has not yet been fleshed out in the draft regulations.

"This new law and regulations gives the board the opportunity over the next five to 10 years to further refinements in targeted CPE in other practice areas," board chair Olsen said.

The draft regulations do recognize as valid CPE college courses taken for academic credit at a regionally accredited college or university that fall within one or more of the recognized subject areas.

Academics would also be rewarded with CPE credit if they teach a "credit-bearing" course, according to the draft regulations, as long as the instruction is in the aforementioned concentrations, and the licensee has not taught the course more than once without presenting new or substantially revised material. The CPA college educator will be allowed 15 contact CPE hours per semester-hour credit, or 10 contact hours per quarter-hour credit, according to the draft regulations.

Another draft regulation provision would increase the amount of credit CPE registrants receive for self-study. Current regulations award a half-hour for every hour of pretested completion time. The draft regulations treat all self-study courses the same as interactive courses, in terms of CPE hours earned—an hour for an hour.

A proposed \$50 mandatory CPE fee will be collected from applicants when they file their triennial registration with the SED if draft regulations are adopted.

CPAs not engaged in public accountancy and who have filed a waiver with the SED, will be exempt from the mandatory CPE requirement, according to the law.

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# State Board Votes on Accountancy Reform Draft Regulations

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The board unanimously voted to recommend the proposed CPE regulations.

## Firm Registration

The accountancy reform law requires all CPA firms in New York to register with the SED if the firm is established for the business purpose of offering to perform or performing attest and/or compilation services or services incidental to such services; or the firm uses "CPA," "CPA firm," "PA," or "PA firm" in its title. Even sole proprietors who perform attest and compilation services must register with the SED.

The draft regulations that the board unanimously approved regarding firm registration require an application for firm registration to include:

- A list of all offices within New York state, including the name of the persons in charge of such offices;
- A list of all states in which the firm has applied for or holds registrations, licenses or permits;
- A list of any past denial, revocation or suspension of a license, registration or permit by another state within the past three years;
- A list of all partners, owners or shareholders of the firm, including states of licensure and office addresses;
- A list of each CPA or PA who practices in New York and who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on financial statements on behalf of the firm;
- A list of partners who are currently providing accounting, attest and compilation services and an affirmation that they are competent to do so;
- Confirmation that the firm is appropriately authorized by the SED; and
- Payment of a firm registration fee that would amount to \$50 per office location, plus \$10 per partner.

When a firm reregisters with the SED, the draft regulations would require the firm to submit a copy of its most recently completed quality review report.

## Quality Review

The new accountancy reform law establishes, for the first time in the state's history, a mandatory peer or quality review program.

Seven pages of proposed regulations provided a glimpse of what New York state's peer review program might look like.

Every CPA firm with three or more accounting professionals is required to participate in the quality review program by law, beginning Jan. 1, 2012. Firms with two or fewer accounting professionals must also undergo peer review if they perform attest services for any local or state governmental entity or an attest service specifically required to be performed under New York state law. The draft regulation would

require registered firms that do not perform such attest services to submit a request for the exemption from quality review in writing to the department as part of the firm's triennial registration, with an explanation of the services offered by the firm.

Currently, a voluntary quality review program is administered by the AICPA via the NYSSCPA in New York. Quality review is a requirement of firm membership in the AICPA for firms that perform attest or compilation services.

"The board has the ability to accept another qualified peer review program and in the early stages, that is most likely the path that we will take," Olsen said.

Olsen said the draft regulations were clear in that the board has the right to require modifications or a different type of quality review from the current sponsoring organization if it so chooses.

The draft regulations presented to the State Board named specific boards and agencies as third-parties as sponsoring organizations for the quality review program. The board amended those descriptions before voting, so that all third parties are referred to by function only, not by name.

The board voted unanimously to recommend the draft quality review regulations.

## Limited Permits

The draft regulations allow the SED to consider granting limited permits to CPAs of foreign countries whose professional licensing process is significantly comparable to requirements for the CPA license in the U.S.

"I think this piece came out of the AICPA and NASBA [National Association of State Boards of Accountancy] having gone out and prequalified and entered into mutual recognition agreements with six other credentialing bodies," Dustin said. "So this provision essentially would allow for the issuance of a limited permit, good up to two years."

Dustin acknowledged that the foreign limited permit would allow someone from a foreign country to practice in New York for two years, yet the accountancy reform law's temporary practice provision is only good for 180 days.

"It's the statute," Dustin said. "It's just the way it's written."

The board approved the draft regulation provision, 12-0-1, with board member Williams abstaining from the vote.

## Temporary Practice Permits

The accountancy reform law allows unfettered mobility for all out-of-state CPAs, except for those who provide attest and compilation services. For those out-of-state CPAs whose principal place of licensure is not New York, and who are licensed by another state that has significantly comparable licensure requirements to New

York's, the law authorizes the SED to grant temporary practice permits after they submit an application form to the SED that includes, according to the draft regulations, the applicant's current residential and employment addresses, principal place of business and state or states of licensure, certification by the applicant of good moral character, certification by the applicant that she or he has met the CPE requirements of the state of his or her principal place of business in the year prior to the application form's submission, and payment of a \$125 fee.

"The idea here is that there is already a national standard of significantly comparable states," Dustin said. "So essentially, the board could make the recommendation to the department to adopt that list of states which requires 150 hours of education, you pass the exam and you have the experience we adopted earlier."

A temporary practice permit, according to the law, is valid for 180 days during the 12-month period beginning on the effective date of the permit. It may be renewed by the SED upon reapplication and another \$125 fee payment, up to three times, provided the applicant remains in good standing in New York state and other states of licensure. The applicant can begin practicing in New York state once the SED renders an initial determination that the applicant's application has been received, information necessary to verify requirement for the permit has been included in the application, and the fee paid.

The proposed regulations do not yet address how to treat an applicant who wishes to renew a temporary practice permit a fourth time.

"One model is that they would be able to practice four years out of five, take a mandatory year off and then could come back," Dustin said. "There also has been an interpretation of four years and then you're done; you would essentially need a license. That's one of the items we need counsel's interpretation on."

Although board member Isserman voted to approve the draft regulation provision, he began to question extensively the merits of the law in regard to the temporary practice permit.

He used as an example a Pennsylvania-licensed CPA who lives in New York, and is hired by a New York firm.

"Does that Pennsylvania CPA have to have a temporary permit?" he asked.

"They need a license in New York if their principal place of business is in New York," Dustin responded. "They need a license."

Isserman asked if this was true for just firm employees or for firm owners.

"If they're anybody," Dustin responded. "A temporary practice permit is only good if your principal place of business is in another state. The minute you move to New

York you need a license in New York."

Isserman tried again, this time using a Colorado CPA as an example.

"I take the CPA exam in Colorado; I now have a Colorado state license. I live in New York," said Isserman. "What do I do?"

Dustin said he needs a New York license. "When?" Isserman asked. "How much time do I have to get it? I'm working for a firm in New York. I'm not practicing, I'm just an employee."

"If you take the exam in New York as a Colorado applicant and you're earning your experience in New York and you're submitting that to Colorado to get your license in New York, you're going to then, as soon as you become a CPA in Colorado, need to apply to get a New York license because you're a CPA in New York working in public accountancy," Dustin said.

Isserman said the state is denying a CPA the ability to work.

"I'm not denying you the opportunity," Dustin responded. "You're trying to find a loophole to getting into New York initially."

## Licensure by Endorsement

The licensure by endorsement provision is similar to the requirements of the limited and temporary practice permit, Dustin said.

If an out-of-state CPA is seeking licensure in New York, he or she must be licensed by another state that has significantly comparable licensure requirements—as recognized by a national professional accounting organization—to New York's. They must also be licensed by another state whose individual licensure qualifications are verified by the SED to be significantly comparable to New York's; and provide evidence, satisfactory to the State Board, of at least four years of professional experience in public accountancy after they've earned a CPA license and within 10 years immediately preceding application for licensure by endorsement.

"If you have less than four years of experience, you need to go through the initial licensure process of being licensed in New York," Dustin said.

The board also unanimously voted, with few changes, to approve draft regulations that outline commissions and referral fees, practice of nonattest services in New York by out-of-state CPAs whose principal place of business is in another state, and education and examination requirements for licensure. A thorough review of these regulations will be reported in an upcoming issue of *The Trusted Professional*.

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