



# Ethics Is A Spectator Sport:

## Tax Practice Ethics and Quality Controls

**National Association of Black Accountants**

**38<sup>th</sup> Annual National Convention**

June 16-20, 2009  
New Orleans, LA



# Themes:

- Ethics Not Negotiable
- Controls Are Essential
- Diversity Is Critical

# All Publicity Is Not Good Publicity

- **Does Crime Rhyme with Subprime?**

News that the feds are probing 14 companies involved in mortgage securitization was applauded today by presidential candidate Hillary Clinton, but went unmentioned by the Treasury Secretary.

[Stephen Taub, CFO.com | US](#)

January 30, 2008

- **FBI: 530 Corporate Fraud Probes in Progress**

Those, plus 1,600 mortgage fraud investigations, are straining the bureau's resources.

[Stephen Taub, CFO.com | US](#)

February 11, 2009

# All Publicity Is Not Good Publicity

- **Bernie Madoff Pleads Guilty to Ponzi Scheme, Goes Straight to Jail, Says He's 'Deeply Sorry'**

No More Penthouse Lifestyle for the Financial Scammer

By RICHARD ESPOSITO, ELOISE HARPER, and MADDY SAUER

March 12, 2009—ABC News

- **Accountant Arrested for Sham Audits**

MARCH 19, 2009 [WSJ.com](#)

By AMIR EFRATI

Federal prosecutors brought fraud charges on Wednesday against the auditor of Bernard Madoff's firm on allegations he helped Mr. Madoff deceive investors by signing off on fraudulent financial statements. The arrest of David Friehling marks the first time someone aside from Mr. Madoff has been charged in connection with the decades-long Ponzi scheme that came to an end in December.

# Embrace Controls

"Power tends to corrupt, and **absolute power corrupts absolutely.**"

John Emerich Edward Dalberg Acton, "Lord Acton"

# Embrace Controls

- Avoid “Secret” Dealings
- Create Checks & Balances
- Promote Diverse Thought

# Interactive Exercise:

## The Gambler



# The Gambler

1. Know When to Hold 'Em
2. Know When to Fold 'Em
3. Know When to Walk Away
4. Know When to Run
5. Never Count Your Money When Your Sitting At the Table, They'll Be Time Enough for Counting...When the Dealing's Done

## Scenario Number 1

### Hold 'Em or Fold 'Em?

State X has recently advised of its intent to audit your company. Your predecessor took a return position that he knew was of little merit, to use as “leverage” in the unlikely event of an audit.

Hold 'Em?



Fold 'Em?



## AICPA SSTS No. 1: Tax Return Positions

A member should not recommend a tax return position or prepare or sign a return reflecting a position that the member knows (a) exploits the audit selection process of a tax authority, or (b) serves as a mere arguing position advanced solely to obtain leverage in the bargaining process of settlement negotiations with a taxing authority.

A member should not recommend a tax return position unless the member has a good-faith belief that the position has a realistic possibility of being sustained administratively or judicially.

## Scenario Number 2

### Hold 'Em or Fold 'Em?

Early during an audit, you are asked a question for which, after due diligence, you can find no answer. The auditor decides the underlying issue in your favor. After the preliminary adjustments are forwarded reflecting the favorable finding, you uncover the answer to the auditor's earlier question. The answer is not favorable.

Hold 'Em?



Fold 'Em?



### AICPA SSTS No. 3: Certain Procedural Aspects of Preparing Returns

A member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its fact or on the basis of other facts known to a member.

If Tax laws or regulations require the maintenance of books and records or substantiating documentation to support the reported item, a member should make appropriate inquiries to determine whether such records exist.

## Scenario Number 3

### Hold 'Em or Fold 'Em?

Your company takes a position on a return in Year 1. The Year 1 return is audited and the position agreed to by the Taxing Authority. After the audit, your company takes a contrary position on the return.

Hold 'Em?



Fold 'Em?



## AICPA SSTS No. 5:

### Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision

A tax return position with respect to an item as determined in an administrative proceeding or court decision does not restrict a member from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement.

## Scenario Number 4 Hold 'Em or Fold 'Em?

Auditor begins a comprehensive audit of your company. Along the way, he becomes distracted by several “rabbit trails.” As a result, he fails to ask for data that you know to be harmful to a position that you’ve taken on a return.

Hold 'Em?



Fold 'Em?



AICPA SSTS No. 6:  
Knowledge of Error:  
Administrative Proceedings

Administrative proceeding = examination by a taxing authority or an appeals conference

“The CPA is neither obligated to inform the taxing authority nor may the CPA do so without the client’s permission, except where required by law.”

AICPA SSTS No. 7:

“Once disclosure is agreed upon, it should not be delayed to such a degree that the client or CPA might be considered to have failed to act in good faith or to have, in effect, provided misleading information.”

**ALERT: Exposure Draft Changes**

**6&7 Combined; “neither obligated...nor may do so” language changed to “not allowed”**

# Take Aways



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