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What's Inside

Lessons Learned in Las Vegas

A summary of a few of the presentations at the AICPA National Forensic Accounting Conference on Fraud and Litigation Services

The slogan, "What happens in Vegas, stays in Vegas" may prove to be an empty catch phrase for CPA practitioners who attended the AICPA National Forensic Accounting Conference on Fraud and Litigation Services held at the Bellagio in Las Vegas September 25–26, 2008. These men and women are unlikely to have left behind the valuable guidance and information they gained by attending some of the myriad conference sessions or sharing ideas and experiences with other practitioners. What they took from Vegas are opportunities for further professional growth as well as for firm development.

Karen Kincaid-Balmer of Kincaid Consulting, New York, NY, and Robert Gray of Parente Randolph LLC, Dallas, TX, co-chaired the conference. They helped to create the events that would make more participants eager to apply what they learned and perhaps collaborate with new acquaintances after they left Vegas. This year's conference was even better than the excellent one they helped to organize last year.

The conference sessions addressed the many roles of CPAs—consultants, forensic accountants, investigators, and expert witnesses. The conference presentations ran the gamut of topics that would interest providers of forensic accounting and fraud and litigations services. The topics included corporate securities, electronic discovery, dealing with depositions, intellectual property, data management, issues of privilege and confidentiality in internal investigations, risk assessment, and client and colleague relationships. The list goes on, but to itemize all here would take up too much space.

In general, the topics covered fields and issues that practitioners would want to learn more about.

The Tone of Our Time

In many sessions, presenters recognized the opportunities arising for CPAs in response to the "financial crisis" unrelentingly proclaimed by the media during the time of the conference. In one of the earliest sessions, "Perennial Types of Financial Statement Fraud," Bruce Bush, CPA, of KPMG, Dallas, commented on the financial crisis. He observed that the perpetration of fraud is both perennial and cyclical. Bush characterized the perpetrators of fraud as an assortment of grifters, opportunists, and borrowers, along with crowd followers (for example, chief financial officers who perpetrate or tolerate fraud by rationalizing that everybody's doing it), and minimizers who rationalize that the effect of the fraud on the organization "isn't that bad."

Bush also described the current landscape related to financial statement fraud. Among the related hot topics that populate the landscape are auction rate securities, fair value accounting, the credit crunch, and nonperforming loans. Additional topics are subprime mortgage lending and the Foreign Corrupt Practices Act (FCPA) of 1977. The auction rate securities fraud bubble, for example, continues to implode. Expected are a "tsunami" of lawsuits and FINRA arbitration claims to cover close to $150 billion in liability against major brokerage firms like UBS, Merrill Lynch, Citigroup Smith Barney, Goldman Sachs, and others.

Other conference presenters also cited some of the topics that populated the landscape Bush described, particularly the fraud associated with subprime lending and with the FCPA. The limited

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space in *Focus* makes it impossible to offer detailed descriptions of the conference presentations. We will approach some of the conference presenters to develop articles based on their presentations to be published in future issues of *Focus* and *CPA Expert*.

Global Corruption

For now, we'll try to give readers insight into the issues associated with some of the topics of the conference. Frederic R. Miller, CPA, CFE, MBA, presented a session on "International Bribery & Corruption—The FCPA and OECD Requirements." Miller is a senior partner in the Washington D.C. office of PricewaterhouseCoopers LLP and is the Global Co-Leader of PwC's Anti-Bribery and Corruption practice. In his presentation he gave an overview of the FCPA and discussed the international business risk and red flags, along with current regulatory trends and enforcement. Miller's overview included a discussion of the accounting requirements and internal control provisions of the FCPA.

Miller moved on to the typical red flags signaling possible violations of the FCPA. The red flags he cited are associated with the business conditions of high risk countries and state-owned or controlled entities. The red flags associated with sales include executive commissions, unusual compensation arrangements, and the use of mandated third parties, such as agents and distributors. Other rules that may be red flags include required cash payments to individuals or entities, redirected payments, and such noncash considerations as free travel, the use of vacation homes, internships, scholarships, medical/surgical procedures, tours, or tickets to sporting events.

Miller also discussed red flags that may be associated with third parties and those associated with travel and entertainment.

He then covered the current regulatory trends and enforcement environment. Other efforts to address corrupt practices include the Organization for Economic Cooperation and Development (OECD) Convention enacted in 1999, the Inter-American Convention Against Corruption (1997), and the U. N. Convention Against Corruption (2005).(See also the list of "International Anticorruption Resources" on page 3.)

Miller concluded his presentation by describing some typical scenarios involving possible corrupt practices and citing recent reinforcement trends.

Mortgage Fraud

Subprime mortgage fraud was the subject of the presentation by Supervisory Special Agent Michael A. Cuff, who is a CPA. Cuff is assigned to the Financial Crimes Section, Economic Crimes Unit at FBI Headquarters in Washington, D.C.

Although around the time of the conference, media headlines proclaimed the financial catastrophes related to subprime mortgages, Cuff presented an earlier Subprime Meltdown Timeline, which began in June 2004 with a series of Fed Fund Rate increases by the Federal Reserve. By June 2006, seventeen consecutive increases raised the rate from 1% to 5.25%. In April 2008, subprime losses reached $232 billion.

As he displayed a diagram of the subprime loan process, from loan origination to the secondary market and then to investors, Cuff commented that the "FBI has been dealing with this for years. It's nothing new."

More dramatic were the photographs that Cuff projected on the screen. They included pictures of drastically deteriorated properties being offered to buyers in illegal property flips and short-sale frauds. In the short-sale frauds, the perpetrator recruits a straw buyer of the property to secure a mortgage for 100% of the property's value. Then the perpetrator might ask the straw buyer to obtain a loan of perhaps $30,000 for repairs. However, no repairs are made, and the perpetrator pockets the $30,000. Furthermore, no mortgage payments are made, so the mortgage defaults.

The straw buyer then tells the lender that the mortgage will foreclose and recommends the perpetrator as a prospective purchaser. The perpetrator makes an offer for less than the property's value. The lender agrees, not knowing that mortgage payments were withheld deliberately to create this short-sale situation. The perpetrator profits by either selling the property at actual value or inflating its value for an illegal property flip.

Another ruse used to profit from foreclosures is a rescue scam. In this scenario, the perpetrator convinces the homeowner that the home can be rescued if the owner pays upfront fees and signs the property deed over to the perpetrator. The perpetrator then forges and manipulates the deed. The perpetrator profits by selling the house or securing a second loan without the victim's knowledge.

In pursuit of these fraudsters, the FBI conducted "Operation Malicious Mortgage" from March 1, 2008 until June18, 2008. The associated losses were estimated to be $1.07 billion. Of the 406 defendants charged, 173 were convicted, and 81 were sentenced.

Expert Advice for the Expert Witness

One presentation entitled "Powerful Communication Skills" may seem to be run of the mill because of its title. However, practitioners who give expert witness testimony understand its value well. Clearly from the reaction of those who attended the session, it provided valuable guidance that differed somewhat from what one usually takes away from sessions about communications skills. The presenter, Barbara Tannenbaum, Ph.D., is president of Dynamic Communication, LLC (**www.dyncomm.com**) and Director of Speech in the Department of Theatre, Speech & Dance at Brown University. Dr. Tannenbaum advises financial professionals, lawyers, judges, political candidates, doctors, and others on how to communicate effectively.

"Speak to values and beliefs most important to your audience, *not necessarily* values and beliefs most important to you."

Tannenbaum believes that all speaking is public speaking and that communication needs to be goal-oriented and audience-centered. She also offers the Tannenbaum Corollary: She adds that we can compromise without being compromised.

The impact of a speaker, Tannenbaum believes, is 60% visual and 30% vocal. The message accounts for only 10% of the impact. Given the importance of visual impact, the speaker needs to take up space. She pointed out that men are more likely at a meeting to spread out and take up more space than women tend to do. She encouraged women to adapt a demeanor that will give them the benefit of the visual impact of taking up space. Tannenbaum advises speakers to always stand, if appropriate.

Her other tips included:

- Wear dark clothes.
- When using PowerPoint slides, use gestures that are fewer and neater and made with a finger rather than the hand.
- Eliminate qualifying language such as *just, very, really, pretty*, and *I think*.
- Lower the pitch of your voice because it will carry better.

How To Answer Questions

In addition, Tannenbaum offered the following tips for responding to questions:

- Listen carefully to the question.
- Repeat the question, if appropriate.
- If asked for facts, give them directly and briefly.
- If you don't know the answer, say so and promise to get back to them.
- Address your answer to everyone in the audience, not only the questioner.
- Go back to your main point at the end.

Throughout the coming year, we'll approach many of the conference presenters to develop articles for *Focus* and *CPA Expert* that will provide guidance similar to what was provided at the conference.

Thanks to conference co-chairs Bob Gray and Karen Balmer, the conference offered a rich lode to mine. Kudos to them and the other members of the conference steering committee for their successful efforts.

International Anticorruption Resources

On December 9, 2008 Pricewaterhouse-Coopers announced its establishment of an Anticorruption Centre of Excellence, which will address "governance and anticorruption challenges of today and tomorrow for both private and public sector clients."

PwC's 2008 report "Confronting corruption: The business case for an effective anticorruption program" is available online at **www.pwc.com/anti-corruption**.

Other resources for dealing with foreign corruption include the following:

- The World Economic Forum Partnering Against Corruption Initiative (WEF PACI) (**www.weforum.org**) brings together companies from multiple industries and global locations to fight bribery and corruption.
- Transparency International (**www.transparency.org**), the global anticorruption nongovernmental organization (NGO), works with a multi-stakeholder and international Steering Committee of companies, business associations, academics, union representatives and NGOs. In 2002, the organization published an anticorruption code "Business Principles for Countering Bribery." This code formed the basis for the PACI Principles developed together with members of the World Economic Forum.
- Department of Justice Web site (**www.usdoj.gov/criminal/fraud/fcpa/**)
- The FCPA blog (**http://fcpablog.blogspot.com/**)
- KPMG Forensic 2008 Anti-bribery and Anticorruption Survey (**www.us.kpmg.com/search/index.asp?cid=2883**)
- *Recent Trends and Patterns in FCPA Enforcement/FCPA Digest* 21 Feb 2008 (**www.shearman.com/fcpadigest/**)

Demand for Forensic CPAs Accelerates

An AICPA survey shows that forensic accountants are in demand.

Demand for CPAs who provide forensic accounting services has accelerated, according to an AICPA survey. Two out of three CPAs polled (68%) say their forensic practices have grown over the past year.

"The survey findings tell us not only that forensic accounting services are in demand, but also specifically that CPAs with this expertise are in high demand," said Stephen Winters, AICPA Director of Firm Practice Management and Specialized Communities.

The survey results were released in connection with the 2008 AICPA National Accounting Conference on Fraud and Litigation Services, which was held in Las Vegas September 25–26, and at which a new credential exclusively for CPAs, Certified in Financial Forensics (CFF), was launched. The credential encompasses specialized skills that CPA practitioners apply in a variety of service areas, including bankruptcy and insolvency, computer forensics, fraud investigations, family law, and litigation support, among others.

CPAs Lead the Field

Of the respondents who reported increased demand for their services, 67% cited computation of economic damages as the leading reason, followed by marital disputes (56%) and investigations of financial statement fraud (54%).

AICPA research shows that CPAs represented 94% of forensic experts hired over the past two years.

The survey was administered to more than 5,400 members of the AICPA's Forensic Valuation Services section. The survey was conducted from August 26, 2008–September 17, 2008. A total of 552 members responded, for a response rate of 11%. The maximum standard error at the top line level is plus or minus 4.3 percentage points.

SEC Enforcement Division Releases Internal Manual to the Public

Now available online, the SEC Red Book can provide help in dealing with the Division of Enforcement in investigations.

The Securities and Exchange Commission's (SEC) Division of Enforcement has made its *Enforcement Manual* available on its Web site at **www.sec.gov/divisions/enforce/enforcementmanual.pdf**. The manual describes the division's internal policies and procedures. Created in 1971, the manual, which is commonly known as the "Red Book," until now was available only to SEC employees.

In its introduction, the manual's purpose is described as an electronic document designed to be a reference for the staff in the U.S. Securities and Exchange Commission's Division of Enforcement in the investigation of potential violations of the federal securities laws. It contains various general policies and procedures and is intended to provide guidance only to the staff of the Division. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

Nevertheless, the manual should be a valuable resource in dealing with the division, particularly during investigations.

The manual provides guidelines and knowledge of the division's practices, thereby helping outside parties to deal with the SEC process in a more informed manner and to resolve issues more quickly and at less cost or disruption.

Michelle Gallagher Receives Volunteer of the Year Award

Michelle F. Gallagher, CPA/ABV/CFF, principal of Gallagher and Associates, Lansing, MI, is the recipient of the AICPA Forensic and Litigation Services (FLS) Committee's 2008 Volunteer of the Year Award. The award was presented by Patrice Schiano, chair of the FLS Committee, at the Forensic Accounting Conference on Fraud and Litigation Services in Las Vegas in late September. The award is distributed annually to a volunteer member who has made a significant contribution to the FLS committee, the FLS membership section, and the members of the AICPA.

Gallagher was chair of the AICPA Family Law Task Force. She currently serves on the AICPA ABV Credential Committee, the Forensic Conference Planning Committee, and the Conference Planning Committee for the AAML/AICPA National Divorce Conference. She also participates in the American Bar Association's Family Law Trial Advocacy Institute.

In addition to her service at the national level, she is actively involved in the Michigan Association of Certified Public Accountants (MACPA) Business Valuation/Litigation Support Task Force, and co-chaired the 2006 MACPA Divorce Issues Conference. She has spoken nationally at AICPA and AAML conferences, as well as regionally and locally to a variety of business and professional groups on various business valuation and litigation-related topics.

Bankruptcy and Fraud

Bankruptcy often follows fraud detection, according to a recent study by the Deloitte Forensic Center.

According to a study published recently by the Deloitte Forensic Center, "Ten Things About Bankruptcy and Fraud," companies filing for bankruptcy protection are three times more likely than solvent companies to face enforcement action by the Securities and Exchange Commission (SEC) relating to alleged financial statement fraud.

The Deloitte Forensic Center and Deloitte's Reorganization Services group analyzed bankruptcy filings between 2000 and 2005 and SEC Accounting and Auditing Enforcement Releases issued from 2000–2007 for companies with reported revenues of at least $100 million. In total the group examined 519 bankrupt companies' filings, 2,919 nonbankrupt companies' revenues, and 352 companies' enforcement releases.

The study found that companies to which the SEC issued financial statement fraud–related enforcement releases were more than twice as likely to file for bankruptcy protection as those not issued one. Of publicly traded companies with revenues greater than $100 million that were issued financial statement fraud–related SEC enforcement releases, 35% filed for bankruptcy compared to 14% of similar companies that were not issued the releases.

A Warning Signal?

Approximately one in seven financial statement fraud–related enforcement releases issued to companies that filed for bankruptcy were issued prior to their bankruptcy filings. These situations may provide a warning signal of potential bankruptcy filing.

"With economic conditions likely to increase corporate bankruptcy filings, companies should be aware of their potential exposure to allegations of fraud that may be sustained by the SEC," said Toby Bishop, director of the Deloitte Forensic Center. "Consideration of potential fraud issues may be a wise part of bankruptcy preparations."

Bankrupt companies receiving SEC enforcement releases were twice as likely as solvent companies to have more than 10 alleged financial statement fraud schemes—and at least 1.5 times as likely to have 6–10 alleged fraud schemes. Bankrupt companies with revenues greater than $10 billion that received SEC enforcement releases had 10.8 alleged financial statement fraud schemes on average, compared to 4.3 schemes at such companies with revenue between $100 million and $10 billion.

Identifying Fraud Risks

"In the past few years, many companies have created highly leveraged balance sheets with many layers of debt. When such a highly leveraged company files for bankruptcy protection, its creditors may have little other recourse than to seek recovery from nontraditional sources such as challenging potentially fraudulent conveyances, seeking recovery under D&O policies, and filing other (nonbankruptcy) litigation," said Sheila Smith, national service line leader of Deloitte's Reorganization Services. "This strategic shift has raised risks for directors, officers and senior management, increasing the importance of fraud detection."

Companies that were issued the most enforcement releases were in the consumer business (30%), technology, media and telecommunications (27%), and manufacturing (16%) industries.

Visit **www.deloitte.com/forensiccenter** to download the full report.

Findings on Fraud

Commenting on the current financial crisis, in his presentation "Perennial Types of Financial Statement Fraud," Bruce Bush, CPA, of KPMG, Dallas, Texas observed that perpetration of fraud is both perennial and cyclical. (See "Lessons Learned" on page 1.) The findings of recent surveys summarized in the following article support Bush's comments. They also may explain why, as a recent AICPA survey concluded, demand for forensic CPAs is accelerating.

Growth in Fraud Volume and Value

According to the latest Kroll Global Fraud Report, financial loss to fraud has increased by 22%. The increase is attributed to the credit crunch and the challenging economic climate. Companies lost an average of $8.2 million to fraud in the past three years, compared with last year's figure, which stood at $7.6 million.

The fastest growing types of fraud were information theft (27%, up from 22%) and regulatory and compliance breaches (25%, up from 19%), both up by more than 5 percentage points from last year's survey.

The construction and natural resources sectors suffered the most incidents of fraud. This distinction is due, in part, to the continuing rise in oil prices and an industry shift to higher-risk areas. Healthcare, pharmaceuticals, and biotechnology saw an increase in problems with corruption and theft of stocks or assets, whereas travel, leisure, and transportation reported increases in regulatory and compliance breaches and information theft or loss.

More than four out of five companies surveyed (85%) have suffered from corporate fraud in the past three years, up from 80% in last year's survey. For larger companies the proportion suffering from fraud rose to 90%.

Commenting on the findings, Blake Coppotelli, senior managing director in Kroll's Business Intelligence & Investigations division, said, "The findings show that fraud is not only widespread, but also growing and we expect to see this increase further as conditions become tougher for business and the full impact of the credit crunch unfolds."

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"When you look into the causes of fraud, companies that cited high staff turnover or weak internal controls suffered much higher levels of fraud—in almost every case increasing their exposure by one-and-a-half times. Companies need to look carefully at how they can address these issues to reduce their risk to fraud and improve their business operations."

Only two of the ten categories of fraud tracked in the survey—money laundering and procurement fraud—declined annually, albeit by a mere 1% each.

The Kroll Global Fraud Report includes detailed industry analysis across a range of different fraud categories and regions.

Check tampering and fraudulent billing are the most common small business frauds.

ACFE Report to the Nation

Other key findings include the following:

- More developed economies (North America and Western Europe) saw less widespread fraud activity, whereas economically less developed regions (Middle East and Africa) experienced higher levels of fraud.
- In eight out of ten fraud categories, companies in the Middle East and Africa had the highest or second highest incidence of activity, and North America had the lowest. The only marked exception was intellectual property theft, with less developed regions seeing the fewest incidents and North America the most.

To obtain a copy of the Kroll Global Fraud Report (September 2008), go online to **www.kroll.com/fraud**.

Small Businesses Especially Vulnerable

Kroll reports that more developed economies, such as those of North America, saw less widespread fraud activity than did less developed economies. However, among the businesses in the more developed economies that are victims of fraud, small businesses suffer the worst damages.

On August 12, 2008, the Association of Certified Fraud Examiners (ACFE) reported the results of its survey, *2008 Report to the Nation on Occupational Fraud & Abuse*. According to the survey findings, U.S. organizations lost an estimated 7% of their annual revenues to fraud. Among the fraud cases detailed for the survey, the median loss suffered by organizations with fewer than 100 employees was $200,000 higher than the median loss for organizations in any other category.

The ACFE compiled its data from 959 cases of occupational fraud that were investigated by certified fraud examiners (CFEs) between January 2006 and February 2008. The ACFE's first *Report to the Nation* was published in 1996 and the latest in 2008. The *Report to the Nation* is available for download online in PDF format at the ACFE's Web site, **www.ACFE.com/RTTN**.

Common schemes

The study found that check tampering and fraudulent billing were the most common of all small business fraud schemes. In fact, more than one-fourth of all small business frauds in the survey involved check tampering, making it a much more common method of fraud than in larger organizations. Check tampering commonly occurs in situations where duties related to the cash disbursement function are not separated.

Combating small business fraud

The ACFE recommends that small businesses fight fraud by taking several steps to prevent, identify, and effectively manage potentially costly fraud losses. The proactive steps would include implementing internal controls to prevent and detect fraud, fostering a company culture that doesn't tolerate unethical behavior, and developing and publishing a code of ethics for management and employees.

Another step is to establish hiring procedures that thoroughly vet new hires. This vetting should include thorough background investigations that include checking education, credit, and employment history. In addition, performance reviews should assess employees' compliance with the company's ethics and antifraud programs.

Employees should be trained in fraud prevention. The training should include being made aware of the warning signs of fraud and learning procedures for reporting suspicious activity by customers or coworkers. In addition, staff should learn at least some basic fraud prevention techniques.

Organizations should regularly audit high risk areas, such as financial or inventory departments. When fraud is suspected or discovered, it is imperative to enlist the services of an expert. The ACFE sponsors the CFE credential. The AICPA has recently launched a credential exclusively for CPAs, the Certified in Financial Forensics (CFF) credential.

Letters to the Editor

Focus encourages its readers to write letters on consulting services issues and on published articles. Please remember to include your name and telephone and fax numbers. Send your letters by e-mail to wmoran@aicpa.org.

Damages Exceed $1 Million for Few Plaintiffs

A Justice Department study finds that in 2005, few plaintiffs in civil bench and jury trials received damages exceeding $1 million.

In 2005, nationwide, more than 14,000 plaintiff winners received monetary damages in civil trials. However, less than 5% received damages exceeding $1 million, the Justice Department's Bureau of Justice Statistics (BJS) announced on October 30, 2008. The BJS study is the first nationally representative measure of general civil (that is, tort, contract, and real property) bench and jury trials in state courts of general jurisdiction.

Nationwide, plaintiff winners in civil bench and jury trials were awarded an estimated $6 billion in compensatory and punitive damages in 2005. The median final damage award was $28,000. More than 14% of plaintiff winners were awarded damages exceeding $250,000.

In 2005, state courts of general jurisdiction disposed of approximately 26,950 general civil cases through bench or jury trials. The majority (61%) of these trials involved a tort claim—the plaintiff alleged injury, loss, or damage from negligent or intentional acts of the defendant. The most common tort cases involved motor vehicle accidents, which accounted for 35% of all civil trials. The median final award for plaintiff winners in motor vehicle accident cases was $15,000.

Of all civil trials, cases alleging breach of a contractual agreement accounted for 33%. Contract cases frequently involved businesses as the plaintiff or defendant, as opposed to tort cases in which individuals were the primary litigants.

Judges were significantly more likely than juries to find for the plaintiff over the defendant. Plaintiffs won 68% of bench trials compared with 54% of jury trials.

Punitive damages were awarded in approximately 5% (700) of the more than 14,000 bench and jury civil trials with plaintiff winners in 2005. Overall, the median punitive damage award in these trials was $64,000. Among civil bench and jury trials in which punitive damages were awarded, 26% had punitive awards that exceeded compensatory awards by a ratio of four to one or greater.

In the nation's 75 most populous counties, the number of civil trials decreased by 52% from 1992–2005. Tort cases in these counties had the smallest decrease (40%), whereas contract (63%) and real property (77%) cases registered the largest declines.

The median final award in jury trials within the nation's 75 most populous counties also decreased from 1992–2005. The median jury trial award in the largest counties was $43,000 in 2005, down 40% from 1992 when the median award was $72,000. This trend was driven by decreases in awards for motor vehicle tort trials, in which the median jury awards declined from $41,000 to $17,000.

Some tort case categories had marked increases in their median jury awards. For example, product liability trials had median awards at least 5 times higher in 2005 than in 1992, and in medical malpractice trials, median awards more than doubled to $682,000 in 2005 from $280,000 in 1992.

The report, *Civil Bench and Jury Trials in State Courts, 2005* (NCJ 223851), can be found online at **www.ojp.usdoj.gov/bjs/abstract/cbjtsc05.htm**.

IASB Publishes Guidance on Fair Value

IASB publishes educational guidance on the application of fair value measurement when markets become inactive.

On October 31, 2008 the International Accounting Standards Board (IASB) published educational guidance on the application of fair value measurement when markets become inactive. The educational guidance comprises a summary document prepared by IASB staff and the final report of the expert advisory panel established to consider the issue.

The summary document sets out the context of the expert advisory panel report and highlights important issues associated with measuring the fair value of financial instruments when markets become inactive. It takes into consideration and is consistent with recent documents issued by the U. S. Financial Accounting Standards Board (FASB) on October 10, 2008 and by the Office of the Chief Accountant of the U. S. Securities and Exchange Commission and FASB staff on September 30.

The expert advisory panel was formed to assist the IASB in reviewing best practices in the area of valuation techniques and formulating any necessary additional guidance on valuation methods for financial instruments and related disclosures when markets are no longer active. The expert advisory panel comprises experts from users, preparers, and auditors of financial statements, as well as regulators and others. Participants were selected on the basis of their practical experience with the valuation of financial instruments in the current market environment.

In the report, the panel identifies practices that experts use for measuring the fair value of financial instruments when markets become inactive and the practices for fair value disclosures in such situations. The report provides useful information and educational guidance about the processes used and judgments made when measuring and disclosing fair value.

The panel's discussions have provided insight into whether there is a need for additional guidance in this area. The concern of the panel was how to measure the fair value of financial instruments when markets are no longer active. The panel did not discuss whether fair value is an appropriate measurement basis for a particular financial instrument or class of financial instruments.

The IASB has also used the work of the panel to address the issues of disclosure, an area identified by the Financial Stability Forum (FSF) along with fair value measurement and

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off balance sheet accounting. The feedback from the panel was used in preparing the exposure draft proposing improvements to IFRS 7, *Financial Instruments: Disclosures,* published on October 15 and will be used in developing the forthcoming standard on fair value measurement. The IASB expects to publish an exposure draft of that standard in 2009.

Sir David Tweedie, Chairman of the IASB, said the following about the report:

The expert advisory panel has provided useful input to a number of projects and we are moving quickly to incorporate their valuable contributions into our standards. Round-table discussions in Asia, Europe and the United States, to be held jointly with the FASB, will provide additional opportunities to gather views on where further enhancements may be required. Added to this, the joint IASB - FASB high level advisory group now being set up will provide advice to both boards on the reporting lessons from the credit crisis.

The educational guidance can be downloaded from the IASB Web site at **www.iasb.org/expert-advisory-panel**. In addition, a comprehensive summary of the IASB response to the credit crisis is available online at **www.iasb.org/credit+crisis.**

Credit Crisis Spurs Unprecedented Volume of Litigation

Navigant Consulting, Inc. released a report on December 18, 2008 showing an unprecedented escalation in subprime-related filings as worsening economic conditions promise to drive the litigation volume ever higher. The number of subprime mortgage and related cases filed in federal court during the first nine months of 2008 already exceeds by more than 50% the total for all of 2007 (448 to 294). Filing volume in the September 2008 quarter was the third highest on record with 131 new matters, and the total number of cases filed reached an astounding 742 for the 21-month period ending September 30, 2008.

The Navigant report, titled *Third Quarter 2008 Update: Breaking New Ground*, notes that, although the volume of new case filings continues unabated, the litigation is showing signs of maturing based on the breakdown of new cases filed. For example, borrower class action filings, which lead all categories over the seven quarters tracked by Navigant, fell precipitously in the third quarter as the underlying loan transactions became more remote in time. Meanwhile, the number of securities lawsuits and contract disputes increased sharply, registering their highest quarterly totals to date.

For a copy of the full report, *Third Quarter 2008 Update: Breaking New Ground*, contact Shannon Prown of Navigant Consulting at 215-832-4436 or Amy Cantu of Levick Strategic Communications at 202-973-1325.

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