State Board of Accountancy January 21, 2020

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BOARD MEMBERS:

Monique M. Ericson, CPA, Office of Attorney General Mary Jensik, CPA

15 Paul J. Kelly III, CPA

16 Michael D. Ocker, CPA - Absent 17 Sheri L. Risler, CPA - Absent

18 Michael P. Rollage, CPA

19 David W. Stonesifer, CPA - Absent 20 Alfred L. Whitcomb, PA - Absent

BUREAU PERSONNEL:

Ronald K. Rouse, Esquire, Board Counsel Angela B. Lucci, Esquire, Board Prosecution Liaison Ray Michalowski, Esquire, Senior Prosecutor Dean F. Picarella, Esquire, Senior Counsel Sara Fox, Board Administrator

Cynthia Montgomery, Esquire, Regulatory Counsel

ALSO PRESENT:

Michael D. Colgan, CAE, CEO & Executive Director, Pennsylvania Institute of Certified Public Accountants

State Board of Accountancy

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The regularly scheduled meeting of the State

Board of Accountancy was held on Tuesday, January 21,

2020. Erik V. Scully, Esquire, CPA, Chairman, called
the meeting to order at 9:00 a.m.

January 21, 2020

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[Erik V. Scully, Esquire, CPA, Chairman, noted that this Board regulates the practice of public accountants and certified public accountants in the Commonwealth of Pennsylvania. Its function includes the regulations of licensure and registration of public accountants and licensure and certification of certified public accountants.

He further noted that this Board promulgates, amends, and enforces the requirements for continuing education and the Standards of Professional Conduct applicable to public accountants and CPAs, a function important to the Commonwealth and its citizens.

Chairman Scully finally noted that this Board adheres to ethical standards of independence, integrity, character and responsibility.]

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Presentation 1 [When Erik V. Scully, Esquire, CPA, Chair, was 2 3 prepared to present Barry Berkowitz, CPA, with a 4 proclamation from the Governor, Mr. Berkowitz 5 presented Chair Scully with a similar proclamation 6 recognizing their special working relationship since 7 2011.1 * * * Roll Call/Introductions 10 [Board members and staff identified themselves for the 11 record. A quorum was noted to be present.] * * * 12 13 Report of Prosecutorial Division 14 [Angela Lucci, Esquire, Board Prosecution Liaison, 15 presented a Consent Agreement for File No. 17-55-16 08520.1 * * * 17 18 [Ms. Lucci stated the Prosecution Division was working 19 with the National Association of State Boards of 20 Accountancy (NASBA), Center for Public Trust and 21 Ethics Leadership Program to develop a remedial 22 education program on ethics in the profession. 23 noted the program will focus on ethical cultural,

ethical leadership, ethical strategies, and PA CPA law

and regulations. A Certificate of Completion would be

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provided at the conclusion of the program. Additional information on the program would be forthcoming.

The Board concurred with the need to develop this program in conjunction with NASBA. Data was requested by the Board related to the areas of deficiencies of its licensees.

Ms. Lucci informed the Board that Tiffany Raker, Esquire, Board Prosecutor, and herself underwent CLE training by the Pennsylvania Bar Institute entitled Finance for Lawyers. The training included topics such as foundations of modern accounting, financial statements, common methodologies and principles, financial reporting, and detecting financial fraud schemes. Ms. Lucci reported that the training was very informative as to the practice of accounting. She thanked the Board for sponsoring the training.]

18 Report of Board Counsel

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[Ronald Rouse, Esquire, Board Counsel, noted matters on the agenda for discussion in Executive Session.

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Mr. Rouse explained Act 41, Licensure by Endorsement, addresses individuals seeking licensure in Pennsylvania who are currently licensed in another jurisdiction. He noted the matter was directed to the Regulatory Committee by the Board at its previous

meeting.

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Mr. Rouse discussed defining substantial equivalency for individuals from other countries. Mr. Berkowitz noted that the Regulatory Committee had not met since the Board's November meeting. Mr. Rouse referred to NASBA International Services as a resource for the Board's determination of substantial equivalency of foreign countries. Mr. Berkowitz discussed utilizing the many services of NASBA included in the Board's membership in determining substantial equivalency.

Mr. Rouse next discussed defining competency to apply for licensure in Pennsylvania under Act 41. Chairman Scully clarified that the Board as regulators must promulgate a regulation to define substantial equivalency and competency under Act 41. He questioned the Board's ability to reference an outside agency on interpretation in order to simplify the regulatory process and regulate according to the developments in the profession.

Ms. Lucci noted references in the Board's current regulations to outside agencies in relation to setting standards. Chairman Scully stated the Regulatory Committee should meet and make a recommendation to the full Board. Mr. Rouse noted the Regulatory Committee

would assist him in drafting the Act 41 regulation.

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Mr. Rouse next discussed the Continuous Testing
Statement. He noted that NASBA, the American
Institute of Certified Public Accountants (AICPA) and
Prometric reached an agreement to move forward with
continuous testing for the CPA exam beginning July 1,
2020. Mr. Berkowitz stated three had not adopted
continuous testing but still were allowing continuous
testing.

Mr. Rouse will draft the statement for Continuous Testing to comply with the testing windows. He reviewed the current testing windows for the examination through Prometric.

Chairman Scully referred Ms. Lucci to Sections
5.2, 5.3, and 5.4 of the Act, which refers to other
regulatory bodies. Ms. Lucci also noted Pa. Code
\$11.84 related to Peer Review Standards, "A peer
review shall be conducted in accordance with the
AICPA's 'Standards for Performing and Reporting on
Peer Reviews' including interpretations thereof." Mr.
Rouse noted the language for the drafting of the
proposed regulations. Mr. Berkowitz discussed
assuring that future Boards are aware of the thoughts
of the predecessor Boards.]

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1 Report of Board Chairman

2 [Erik v. Scully, Esquire, CPA, Chairman, noted the

3 committee assignments. He encouraged the Regulatory

4 Committee to meet before the next meeting in order to

5 address the Act 41 and Continuous Testing issues.

6 Chairman Scully noted the written Gift Ban Policy

7 and Pennsylvania Sunshine Act included in the agenda

8 material.

10 [The Board recessed from 9:33 a.m. until 9:41 a.m.]

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12 Report of Regulatory Counsel

13 [Cynthia Montgomery, Esquire, Regulatory Counsel,

14 provided a brief summary of her professional

15 background.

16 Ms. Montgomery provided an overview of the eight

17 basic steps to the regulatory process. She explained

18 that it starts with the drafting of the regulations,

19 pre-publication review, proposed regulation published

20 | for public comment, Legislative Committee and the

21 Independent Regulatory Review Commission (IRRC)

22 review, revision of the final rulemaking, post-

23 publication review, Legislative Committee and IRRC

24 review part 2, and then the final regulation

25 publication.

Mr. Rollage questioned the length of time for a regulation to pass through the Legislative Committee and IRRC. Ms. Montgomery reviewed the efforts of the Regulatory Committee and Regulatory Counsel to swiftly move the regulations forward.

Ms. Montgomery stated the idea for drafting a regulation can come from legislature, the courts, the public, the bureau, the prosecution division, and the Board.

Ms. Montgomery stated Board Counsel generally will draft the annex, which is the text of the regulation or the amendment to the existing regulation. She commented that an exposure draft is then sent out, noting Executive Order 1996-1 from Governor Ridge's administration, that requires all regulations be drafted and promulgated with early and meaningful input from the public to stakeholders and interested parties who have an interest in the Board's regulatory agenda to announce that the Board is considering this regulation.

Ms. Montgomery stated the Board considers the comments received. Once the Board is satisfied with the text of the regulations, staff will draft a preamble. She noted the preamble to be an explanatory document of the regulation. She explained that the

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Office of General Counsel (OGC) determines what goes
into the preamble and includes an effective date,

3 background and need for the regulation, a description

4 of the proposed regulation, an analysis of fiscal

5 | impact and paperwork requirements, and then

6 boilerplate details about the regulatory review

process, and the information on submitting formal

comments, suggestions or objections regarding the

9 proposed regulation.

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Ms. Montgomery stated counsel also will complete a document called the Regulatory Analysis Form required by the IRRC under the Regulatory Review Act, which contains what IRRC considers to be pertinent information for the Board to consider in determining whether the regulation is in the public interest.

Chairman Scully referenced the move for uniformity for the profession between states and professional organizations. Ms. Montgomery discussed the applicability of the Continuing Violation Doctrine and similar standards for consideration by the Board in promulgating a regulation. Chairman Scully and Mr. Berkowitz referred to the continuous testing trends and windows for testing in relation to following outside agency's guidelines in the Board's regulations.

Mr. Rollage questioned the length of time to go through the regulatory process in order to keep up with the current trends in the industry. Mr. Berkowitz stated the Board's regulations do not coincide with the AICPA Code of Professional Conduct as it is a non-governing body. He discussed referencing the amended Uniform Accountancy Act (UAA). Ms. Montgomery explained a regulation could possibly be published within a year. The normal promulgation of a regulation is at least two years. Mr. Rouse added the length of time between Board meetings contributes to the length of the regulatory process.

Ms. Montgomery outlined the pre-publication review process through the Office of Chief Counsel to confirm appropriate statutory authority, if the regulation is consistent with legislative intent, and if it conforms to the Legislative Reference Bureau of Style Manual.

Ms. Montgomery stated, after the internal review is finished, the regulation goes to the Office of General Counsel and Governor Wolf's Office of the Budget and Office of Policy and Planning. She explained the Office of the Budget prepares a fiscal note on every regulation and any agency publishing, and the Office of Policy and Planning reviews it to

1 | confirm the regulation is in the public interest.

Ms. Montgomery explained a process called tolling, where OAG can stop the 30-day review period if there are any questions or objections, and the regulation will be sent back to the agency for a resolution.

Ms. Montgomery stated, once the Office of
Attorney General approves the regulation, the
regulation goes back to the agency for a process
called delivery, which is under the Regulatory Review
Act and the regulations of the Independent Regulatory
Review Commission. She noted that the regulation is
delivered personally by staff to the Legislative
Committee, House, Senate, House Professional Licensure
Committee, and the Senate Consumer Protection &
Professional Licensure Committee, Independent
Regulatory Review Commission, and the Legislative
Reference Bureau on the same day.

Ms. Montgomery addressed a new electronic delivery process that will be moved out to other agencies if successful.

Ms. Montgomery explained the Commonwealth

Documents Law that requires all agencies to publish

and note its intention to promulgate, repeal, or amend
a regulation in the Pennsylvania Bulletin.

Ms. Montgomery addressed a review by IRRC under the Regulatory Review Act, which was enacted in 1982 to address a concern by the legislature that executive agencies were promulgating a law out of regulations. She also noted that the House and Senate Committees have an opportunity to review and convey their comments up until delivery of the final-form rulemaking.

Ms. Montgomery noted that the regulation is then reviewed by the Independent Regulatory Review

Commission, where it is published approximately 10 days later with a 30-day public comment period and 30 days until IRRC's comments, which is a 70-day process once it is delivered. She stated the regulation will be deemed approved by IRRC if they do not comment.

Ms. Montgomery stated, after the final-form regulation is delivered, IRRC may not take action for at least 20 days to allow the committees to comment on the final-form rulemaking and has until its next scheduled public meeting, which is no less than 30 days from the day it was delivered, to take action.

Ms. Montgomery noted that Board Counsel or Regulatory Counsel will present the rulemaking to the Commission, answer any questions, and convince IRRC that the regulation is in the public interest and get

an affirmative vote. She commented that it gets submitted to the Office of Attorney General for final review for form and legality once approved by IRRC.

Ms. Montgomery addressed the disapproval process, where IRRC issues a disapproval order and states their reasoning for disapproving the regulation, noting that the Board has 40 days upon receipt of that disapproval order to bring it back to IRRC. She noted that the Board can either withdraw the rulemaking, submit the regulation with revisions that respond to IRRC's disapproval order, or submit unchanged.

Ms. Montgomery stated, after the regulation is approved, it goes to the Attorney General for approval, the Legislative Reference Bureau again, and is published as final rulemaking in the Pennsylvania Bulletin.

Ms. Montgomery mentioned that the proposed rulemaking part can be omitted in some circumstances, where everybody subject to the rulemaking receives actual notice, but most of the circumstances do not pertain to the agency. She provided scenarios of regulations that were final omitted.

Ms. Montgomery discussed Sine Die, which is the final adjournment of a two-year legislative session, which will happen again in 2020. She stated the

proposed rulemaking can be delivered to IRRC for their comments and published for public comment but not delivered to the Standing Committees. She noted that counsel has to be cognizant of those time frames to ensure the regulation does not timeout during that two-year deadline.

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Ms. Montgomery noted that final regulations cannot be delivered during Sine Die and must wait until the next session for delivery, where the Standing Committee shall have 20 days to review the regulation. If the session is stopped early, the committee gets no less than 10 days to complete their review of the final rulemaking.

Mr. Berkowitz commented on the more timely promulgation of regulations in other states. Ms. Montgomery noted a study conducted by a university of the regulatory processes of the various states and territories. Pennsylvania received a B+ due to being a robust process designed to develop regulations that make sense to the regulatory community and aligns with the administration's policy objectives.

Ms. Montgomery commented on the significant regulatory agenda for the 29 Professional and Occupational Boards in Pennsylvania. She also referred to regulations that quickly moved through the

16 1 regulatory process. 2 Chairman Scully thanked Ms. Montgomery for her 3 very informative presentation.] 4 5 Report of Board Administrator 6 [Sara Fox, Board Administrator, noted the Board Member Cost Center Code - Travel Rental Care, Hotel Tax Exempt Certificate, and Travel Mileage Reimbursement Memo documentation in the agenda for the Board's 10 review.] * * * 11 12 [Pursuant to Section 708(a)(5) of the Sunshine Act, at 13 10:32 a.m., the Board entered into Executive Session 14 with Ronald Rouse, Esquire, Board Counsel, to have 15 attorney-client consultations and for the purpose of 16 conducting quasi-judicial deliberations regarding 17 certain matters on the agenda. The Board returned to 18 open session at 12:41 a.m.] * * * 19 2.0 MR. ROUSE: 2.1 Pursuant to Section 708(a)(5) of the 2.2 Sunshine Act, the Board entered into 2.3 Executive Session with Board counsel to 2.4 have attorney-client consultations and 25 for the purpose of conducting

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                  Scully, aye.
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   [The motion carried unanimously.]
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   MOTIONS
   MR. ROUSE:
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                  Regarding the Consent Agreement at Item
                  No. 2 of the agenda, File No. 17-55-
                  08520, I believe the Board will
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                  entertain a motion to adopt the Consent
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                  Agreement.
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   CHAIRMAN SCULLY:
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                  So moved.
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   MR. BERKOWITZ:
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                  Second.
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   CHAIRMAN SCULLY:
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                  Roll call.
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                  Barry M. Berkowitz, aye; Monique M.
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                  Ericson, aye; Michael P. Rollage, aye;
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                  Paul J. Kelly III, aye; Mary Jensik,
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                  aye; Theodore Stauffer, aye; and Erik V.
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                  Scully, aye.
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   [The motion carried unanimously. The name of the
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   Respondent is Douglas Patrick Barton, CPA.]
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19 1 MR. ROUSE: 2 Moving along to No.3 on the agenda, I 3 believe the Board would entertain a motion to provisionally deny the CPA 4 5 Exam Application of Robin Lane. CHAIRMAN SCULLY: 6 So moved. MR. KELLY: 9 Second. 10 CHAIRMAN SCULLY: Roll call. 11 12 13 Barry M. Berkowitz, aye; Monique M. 14 Ericson, aye; Michael P. Rollage, aye; 15 Paul J. Kelly III, aye; Mary Jensik, aye; Theodore Stauffer, aye; and Erik V. 16 17 Scully, aye. 18 [The motion carried unanimously.] * * * 19 20 MR. ROUSE: 21 Moving along to No. 3 on the agenda, I 22 believe the Board would entertain a 2.3 motion to provisionally deny the CPA 24 Exam Application of Robin Lane. 25 CHAIRMAN SCULLY:

20 So moved. 1 2 MR. KELLY: 3 Second. 4 CHAIRMAN SCULLY: 5 Roll call. 6 Barry M. Berkowitz, aye; Monique M. Ericson, aye; Michael P. Rollage, aye; 9 Paul J. Kelly III, aye; Mary Jensik, 10 aye; Theodore Stauffer, aye; and Erik V. 11 Scully, aye. 12 [The motion carried unanimously.] 13 * * * MR. ROUSE: 14 I believe the Board would entertain a 15 motion at Item No. 4 on the agenda to 16 adopt the final Adjudication and Order 17 as presented by Board Counsel in the 18 19 case of James J. McCarthy & 20 Associates, P.C., File No. 15-55-21 10441, and to direct Board Counsel to 22 prepare and send out the Board's final 23 Order. 2.4 CHAIRMAN SCULLY: 25 So moved.

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   MR. BERKOWITZ:
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                   Second.
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   CHAIRMAN SCULLY:
                  Roll call.
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                  Barry M. Berkowitz, aye; Monique M.
 6
                  Ericson, aye; Michael P. Rollage, aye;
                  Paul J. Kelly III, aye; Mary Jensik,
 9
                   aye; Theodore Stauffer, aye; and Erik V.
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                  Scully, aye.
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    [The motion carried unanimously.]
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   MR. ROUSE:
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                    Going to No. 7, Continuous Testing
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                    Statement, I believe the Board would
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                    entertain a motion to start the
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                    regulatory process regarding
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                    Continuous Testing, consistent with
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                    discussions in Executive Session.
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   MR. BERKOWITZ:
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                  So moved.
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   MR. KELLY:
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                   Second.
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   CHAIRMAN SCULLY:
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                  Roll call.
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22 1 2 Barry M. Berkowitz, aye; Monique M. 3 Ericson, aye; Michael P. Rollage, aye; 4 Paul J. Kelly III, aye; Mary Jensik, 5 aye; Theodore Stauffer, aye; and Erik V. 6 Scully, aye. 7 [The motion carried unanimously.] 8 Review of Program Sponsor Applications 10 CHAIRMAN SCULLY: 11 I move to approve BookSmartCPE LLC, 12 Merrill Lynch, and Stevens & Lee. Do I have a second? 13 14 MR. BERKOWITZ: 15 Second. 16 CHAIRMAN SCULLY: 17 Roll call. 18 19 Barry M. Berkowitz, aye; Monique M. 20 Ericson, aye; Michael P. Rollage, aye; 21 Paul J. Kelly III, aye; Mary Jensik, 22 aye; Theodore Stauffer, aye; and Erik V. 23 Scully, aye. 24 [The motion carried unanimously.] * * * 25

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1
   CPE Waiver
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   [Barry M. Berkowitz, CPA, explained the role and
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   quidelines of the CPE Waiver Committee, consisting of
   Ms. Ericson and Mr. Berkowitz.]
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   MR. BERKOWITZ:
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                  I would move to ratify the CPE Waivers
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                  for Items 18 through 34, except for
                  Items 24 and 32, and ratify the
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                  extension for CPA requirements for Items
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                  35 through 45.
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                       Do I have a second?
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   MR. KELLY:
                  Second.
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14
   CHAIRMAN SCULLY:
                  Roll call.
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17
                  Barry M. Berkowitz, aye; Monique M.
18
                  Ericson, aye; Michael P. Rollage, aye;
19
                  Paul J. Kelly III, aye; Mary Jensik,
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                  aye; Theodore Stauffer, aye; and Erik V.
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                  Scully, aye.
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   [The motion carried unanimously.]
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   [It was noted Item No. 32 would be referred to the
25
   next meeting due to recusals and a lack of a quorum.]
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24 * * * 1 2 Extension of Peer Review [Barry M. Berkowitz, CPA, explained the role and 3 4 quidelines of the Peer Review Committee, consisting of 5 Chairman Scully and Mr. Berkowitz.] 6 MR. BERKOWITZ: I move to ratify provisional extensions 8 to April 30, 2020, for Items No. 46 9 through 81. 10 Do I have a second? 11 MR. KELLY: 12 Second. CHAIRMAN SCULLY: 13 14 Roll call. 15 16 Barry M. Berkowitz, aye; Monique M. 17 Ericson, aye; Michael P. Rollage, aye; 18 Paul J. Kelly III, aye; Mary Jensik, 19 aye; Theodore Stauffer, aye; and Erik V. 20 Scully, aye. 21 [The motion carried unanimously.] 22 2.3 Extension of CPA Examination Credit 24 [Barry M. Berkowitz, CPA, explained the role and 25 quidelines of the CPA Examination Credit Committee,

25 consisting of Ms. Ellis and Mr. Berkowitz.] 1 2 MR. BERKOWITZ: 3 I move to ratify the decisions of the 4 committee for Items No. 82 through 86. 5 Do I have a second? 6 MR. KELLY: 7 Second. CHAIRMAN SCULLY: 9 Roll call. 10 11 Barry M. Berkowitz, aye; Monique M. 12 Ericson, aye; Michael P. Rollage, aye; Paul J. Kelly III, aye; Mary Jensik, 1.3 14 aye; Theodore Stauffer, aye; and Erik V. 15 Scully, ave. 16 [The motion carried unanimously.] * * * 17 Miscellaneous 18

19 [Chairman Scully noted that the Regulatory Committee

20 | will meet to discuss the regulations regarding Act 41

21 Licensure by Endorsement, along with the Continuous

22 Testing Statement. A Regulatory Committee report will

23 be made available on or before the Board's next

24 meeting.

Chairman Scully also noted the Board meeting

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   dates for 2020 and 2021. The Board's next meeting is
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   April 21, 2020.]
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   Adjournment
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   CHAIRMAN SCULLY:
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                   Can I have a motion for adjournment?
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   MR. BERKOWITZ:
                   So moved.
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   MR. KELLY:
10
                   Second.
11
   CHAIRMAN SCULLY:
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                  Roll call.
13
14
                  Barry M. Berkowitz, aye; Monique M.
15
                  Ericson, aye; Michael P. Rollage, aye;
16
                  Paul J. Kelly III, aye; Mary Jensik,
17
                  aye; Theodore Stauffer, aye; and Erik V.
18
                  Scully, aye.
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   [The motion carried unanimously.]
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   [There being no further business, the State Board of
22
   Accountancy Meeting adjourned at 12:52 p.m.]
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CERTIFICATE

I hereby certify that the foregoing summary minutes of the State Board of Accountancy meeting, was reduced to writing by me or under my supervision, and that the minutes accurately summarize the substance of the State Board of Accountancy meeting.

Minute Clerk

Sargent's Court Reporting

Service, Inc.

			28
1 2 3 4 5 6 7		STATE BOARD OF ACCOUNTANCY REFERENCE INDEX	
4		January 21, 2020	
6	TIME	AGENDA	
8	9:00	Official Call to Order	
9 10	9:04	Roll Call	
11 12	9:04	Report of Prosecutorial Division	
13 14	9:15	Report of Board Counsel	
15 16	9:32	Report of Board Chairman	
17 18 19	9:33 9:41	Recess Return to Open Session	
20 21	9:41	Report of Regulatory Counsel	
22 23	10:31	Report of Board Administrator	
24 25 26 27	10:32 12:41	Executive Session Return to Open Session	
28 29	12:41	Approval of Minutes	
30	12:42	Motions	
31 32	12:51	Miscellaneous	
33	12 : 52	Adjournment	
35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50			