American Taxation Association

Volume 8, Spring 1982

Ed Foth, Editor
DePaul University

Letter From Phillips

PRESIDENT'S REMARKS

Report on ATA Committee Activities

ATA Committees have been very active during the 1981-82 year despite the usual problems of limited funds to finance such activities and the inherent difficulties of project management through a committee structure. Many of our members have devoted considerable effort to these committee assignments and I am encouraged by the interest of ATA members in continued service.

The Scope of Tax Practice Committee completed its report; a summary of which is printed in this newsletter.

The newly formed Educational Standards Committee is engaged in the drafting of a survey questionnaire which will attempt to estimate the supply and demand for tax accounting professors and determine what effect, if any, the new AACSB standards for tax faculty have had on tax faculty recruiting. It is expected that the survey results and committee report will be presented to the membership at the 1982 Annual Meeting.

The Committee on Certification of Tax Specialists has met and is preparing a report upon implementation issues. This report will become the basis for our discussions of this topic and the role of the ATA at the 1982 Annual Meeting. This topic will be included on the Annual Program as a panel discussion. As reported in this Newsletter, the ATA Trustees authorized the Certification Committee to extend its study into the area of implementation. Pending final study, the Trustees agreed that certifying tax specialists is desirable, but have *not* taken a position as to whether the ATA is the proper organization to certify tax specialists.

The Committee on State and Local Taxation Curriculum Issues has identified topics which are or should be covered in the curriculum and is preparing an attitude survey of tax practitioners. The study findings and report should be completed prior to the 1982 Annual Meeting.

The ATA Tax Manuscript Award Committee intends to select an award recipient and make the presentation at our Annual Meeting in August. Recommendations were solicited by the Committee in the Fall ATA Newsletter and are currently under review.

The ATA-Alexander Grant Doctoral Dissertation Grant Committee is in the process of contacting all universities with doctoral programs to identify eligible award recipients. Each student was then contacted to request that they apply prior to the April 1, 1982 deadline. This procedure was deemed necessary to increase the number of applicants. The award will be made at our Annual ATA Luncheon.

The Advisory Committee to the 1982 Touche Ross Graduate Tax Education Symposium met with representatives of Touche Ross and the host school, Florida International University, to identify program topics and format. The 1982 Symposium was held May 9-11 in Miami, Florida.

The 1982 Annual Meeting Program will include four sessions on tax topics, the Business Meeting and our Annual Luncheon. Our Luncheon speaker will be Mr. Bernard (Bob) Shapiro who is a tax partner with the Washington, D.C. office of Price Waterhouse and former Chief of Staff of the Joint Committee on Taxation of the U.S. Congress. In addition to a panel presentation on the pro and con issues regarding Certification of Tax Specialists, three additional tax topic sessions are planned.

Organizational Issues Under Consideration

In 1978 when the ATA was granted section status within the AAA, it was agreed that the ATA could retain its separate corporate charter for a three-

Profile: President-Elect James Wheeler

Jim's teaching and research interests are in financial accounting and taxation. His publications include papers which have appeared in the *Journal of Accountancy, The Tax Adviser, Accounting Review,* and other scholarly journals.

Jim has also authored or coauthored a number of research monographs including recent studies concerning the Social Security System and income tax allocation which were funded by the AICPA and the Financial Executives Research Foundation.

He is the author of an advanced accounting text, *Advanced Accounting: A Professional Approach,* published by Richard D. Irwin, and is a coauthor of *Principles of Federal Income Taxation,* published by McGraw Hill.

Jim has been involved in numerous professional committees of the ATA, the AAA, and the AICPA, and has served on the staff of the Joint Committee on Taxation of the U.S. Congress. He has been an expert witness in several major tax cases. He is currently involved in a major research project on a Reappraisal of Interperiod Income Tax Allocation funded by the Financial Executives Research Foundation.

The Scope of Tax Practice by Certified Public Accountants

by the ATA Committee on Scope of Tax Practice

Recently, the increasing demand for tax services has resulted in CPAs expanding the services provided to clients. The purpose of this study was to provide a working document which will guide the CPA in the conduct of tax practice. There are numerous issues which are raised including authorized and unauthorized practice of tax law, problems confronting the CPA acting in the role of tax advocate, and the service of providing clients with investment advisory services.

Issues Involving Unauthorized Practice of Law

Since the introduction of the personal federal income tax in 1913, United States taxpayers have operated under a self-assessment system. This approach, coupled with the extreme complexity of the federal and state tax systems, has produced large groups of professionals and semi-professionals specializing in all areas of tax practice, from simple return preparation to sophisticated tax planning. Two of these groups, lawyers and CPAs, have long been considered prime counselors for those seeking aid and advice in the tax area.

The presence of these two professions in many of the same areas of tax practice has produced intermittent conflict between the two groups during the past fifty years. This conflict first surfaced in the late 1920s with the advent of the Depression. At that time the total volume of tax work declined, right along with people's income, while an increasing number of lawyers entered into practice. These two factors combined to sharpen competition for tax work.

The dispute between the professions over the work available asserted itself in two directions. On the one hand tax attorneys who felt threatened by CPAs practicing in the tax area went to court. They used their state bar associations to secure a legal determination that a particular non-lawyer practitioner was engaged in the unauthorized practice of law. These attorneys felt that obtaining an injunction in a particular instance would intimidate other non-lawyer practitioners similarly engaged.

The other approach to resolve this conflict was the so-called "conference approach," where members of both professions met and worked out mutually agreeable limits of professional practice for each group. Repeated attempts to define a boundary line between the two professions in the area of tax practice have met with limited success.

Disputes between the two professions now are quite rare. To a great extent this protracted truce is due to the vast expansion of tax work for both CPAs and tax lawyers. If at some time in the future either the number of attorneys and/or CPAs in tax practice increases considerably, or the volume of work decreases significantly, these long-simmering disputes about rights to practice could flare up anew.

A paucity of cases and the lack of any consistent set of rulings have characterized the CPA-attorney conflict at the state level. It seems clear that a state cannot prevent a CPA from practicing before the Internal Revenue Service or the U.S. Tax Court, or from engaging in activities which are directly connected with the representation of clients before the IRS. There are, however, many other areas of tax practice which case law has not addressed and which frequently constitute a significant percentage of the tax practice of many CPAs.

One of the most important areas which the courts have not yet addressed, particularly in light of the *Sperry* case, is the boundary line between what a CPA may or may not do in the area of giving general tax advice. Today many CPAs engage in practices which span the spectrum from simple tax return preparation to the representation of clients before the IRS. These CPAs engage in tax planning for their clients, which may or may not encompass the preparation of a return and which may or may not involve representation before the IRS, but which almost always involves the kind of in-depth legal analysis necessary for the client to anticipate what avenue will be best in light of the currently applicable tax law.

Our review of a long series of cases indicates considerable confusion about the scope of a CPA's practice in certain instances. The joint agreements between CPAs and attorneys do not seem to clarify the issue of scope.

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year period but that the separate corporate entity would be dissolved if the ATA felt that continuation of the AAA section status was desirable. The AAA Policies and Procedures Manual states that . . . "Separate incorporation of sections is not consistent with the role of sections within the Association and sections are not authorized to incorporate separately without approval from the Executive Committee."

I have, therefore, asked the Officers and Trustees of the ATA to consider the following alternative forms of organization and to make specific recommendations to the membership:

1. Continue our AAA section status; dissolve our ATA Corporate Charter but continue to be designated as the American Taxation Association; or
2. Discontinue our AAA section status affiliation and continue solely as the ATA with the Corporate Charter in tact.

While the issues are complex, it appears that the significant points in favor of continued AAA section status include:

1. Ease of administration,
2. Centralization of Annual Program facilities and program themes, and
3. Greater influence within the AAA due to section status.

Considerations in favor of operation solely under the separate ATA Corporate Charter and designation include the following:

1. Removal of limitations imposed on sections regarding fund raising and dues charges.
2. Restrictions imposed on sections regarding scope of activities.

It is my understanding that the AAA will permit the tax section (ATA) to continue to be designated as the American Taxation Association. The continued use of the ATA designation appears to be highly desirable to retain the external recognition and visibility which has been achieved by the ATA during the past several years. Your input on this issue would be appreciated.

Lawrence C. Phillips

ATA 1982 Annual Meeting, Town and County Hotel, San Diego, August 15, 16, and 17

Monday, August 16
8:45 a.m. to 10:15 a.m.
American Taxation Association Business Meeting
Presiding: Lawrence C. Phillips
Case Western Reserve University
12:15 p.m. to 1:30 p.m.
American Taxation Association Luncheon
Speaker: Bernard M. ("Bob") Shapiro
Price Waterhouse
3:30 p.m. to 5:00 p.m.
State-of-the-Art of Taxation
Moderator: Larry Crumbley
Texas A&M University

- **"Quantitative Approaches to Validation, Description, and Prediction of U.S. Tax Court Decisions,"** Herbert L. Jensen, University of Bridgeport; and James Hasselback, Florida State University
- **"A Methodology for Analyzing Tax Court Decisions,"** Ronald L. Taylor and Robert W. Ingram, both at University of South Carolina
- **"The Nature and Role of CPAs in Tax Practice,"** James L. Wittenbach and Ken Milani, both at University of Notre Dame
- **"Moot Court Trials: Using Simulation to Increase Communication Skills of Tax Students,"** Debra M. White, North Texas State University; and Edward J. Schnee, University of South Carolina

Tuesday, August 17
10:30 a.m. to noon
Certification and/or Specialization of Tax Practitioners
Moderator: Myron S. Lubell
Florida International University
Panel: William L. Raby, Touche Ross & Co.
Bernard Goodman
University of Hartford
William Keane, Price Waterhouse

Wednesday, August 18
10:30 a.m. to noon
Current Empirical Research
Moderator: Jerrold Stern, Indiana University

- **"Post Mortem Estate Planning Lump-Sum Distributions for Qualified Retirement Plans: An Analytical Tool,"** Janis R. Feeder, University of Delaware; and Robert C. Hogg, Penn State University
- **"Inflation, Corporate Taxation and Capital Maintenance: An Empirical Study,"** Mark Frigo, DePaul University
- **"Indexation of the Personal Income Tax for Inflation: A Comparative Study of the Canadian Experience and the U.S. Proposal,"** J. B. Kane, Arthur Andersen & Co.; and C. T. Lau, University of Windsor
- **"Income Tax Indexing: Its Potential Impact on the Farm Sector,"** Clair J. Nixon and James W. Richardson both at Texas A&M University

2:00 p.m. to 3:30 p.m.
Applied Research
Moderator: Kenneth Orbach
Louisiana State University

- **"Compensation Planning Under the 1981 Economic Recovery Tax Act,"** Debra Hua Lu, St. Cloud State University
- **"An Analysis of the Relative Merits of Capitalizing versus Expensing Interest Under the ERTA of 1981,"** John Goveia, University of Portland
- **"Tax Traps of ACRS for Commercial Buildings — A Present Value Analysis,"** Robert Van Regenmorter, Florida Atlantic University
- **"Taxation of Commodity Futures Contracts,"** Rudolph S. Lindbeck, Auburn University

Profile Of A Program:

THE MASTER OF TAXATION PROGRAM AT GEORGIA STATE UNIVERSITY

by Kathryn C. Buckner

The growing demand for tax specialists and professionals together with the increasing complexity of laws of taxation encouraged the development of the Master of Taxation (MTX) program within the School of Accountancy, College of Business Administration, Georgia State University. The Board of Regents approved the program in November 1977.

The MTX program allows a student to concentrate heavily in specialized taxation courses. Thirty hours (6 courses) are required, but a maximum of forty hours (8 courses) are allowed in the MTX program. This provides a maximum of flexibility to the student within the School of Accountancy and College of Business Administration. A student can obtain an MBA with selected tax electives. An MPA is available with a tax track including five tax courses.

The MTX program was developed to serve recognized needs in the Atlanta, GA and Southeastern U.S. area. Nevertheless, students have been attracted from many other states, such as, New York, Arkansas, Florida, North and South Carolina, Nebraska, Alabama, and Maryland.

The MTX degree program is designed to develop both a conceptual understanding and sound technical foundation at an advanced level for students who desire a more thorough and comprehensive understanding of tax laws than is provided at the undergraduate level. The relationship of the tax discipline to other functional business areas is recognized

together with the interaction of taxation with current social and governmental policies.

The first two graduates of the MTX program finished in the Winter of 1979. By June 1982 over 90 degrees had been granted. The business community has welcomed and competed for these graduates.

Admission procedures and criteria for the MTX are the same as for the MBA and/or the MPA program at Georgia State University. A minimum GMAT score of 480 and an overall GPA of 2.8 on a 4.0 scale (or a GPA of 2.9 for the last two years) for undergraduate work are required. Prerequisite basic knowledge is required in calculus, economics, accounting principles, statistics, marketing, information systems, management, intermediate financial accounting, basic tax accounting, environment of business, and administrative policy formulation.

The 60 quarter hours required for the MTX degree are broken down into three areas: *Group I*. 20 hours of graduate courses in the College of Business Administration. Administrative Policy and Legal Principles of Business are required for all students who have not had equivalent coursework. Tax courses cannot be used to fulfill Group I requirements. Graduate accounting courses can be taken if the student is interested and/or needs the background. *Group II*. 30 hours of graduate taxation courses. Tax Research, to be taken early in the program, and Tax Practice and Procedures are required. Corporate Taxation and Estate, Gift and Trust Taxation should be included. *Group III*. 10 hours of elective graduate courses in the College of Business Administration. Additional tax courses can be used to satisfy this requirement.

Eleven graduate-level tax courses are offered in the curriculum. Courses in Corporate Reorganizations and Liquidations, Partnerships and Special Corporate Areas, Taxation of Property and Security Transactions, Taxation of Pension, Profit-Sharing and Deferred Compensation Plans, Estate Planning, International Tax Problems, and Taxation and Business Management Decisions are available as Group II or III courses. The curriculum is designed to emphasize research, utilize problem solving approaches, develop analytical and evaluative skills, stress communication of results, and to provide for integration of compliance, planning, ethical concepts and practice development.

The School of Accountancy has 33 full-time faculty members. Seven of these professors teach in the taxation program. CPA and attorney practitioners are also utilized as adjunct professors for specialized courses.

The student population is heterogeneous. Approximately 30% are full-time students, of which some are recent undergraduates, some are practitioners on leave of absence from work, some are mothers planning to return to the work force, and some are generating a career change. The remainder of the student body work full- or part-time. These students come from a wide variety of work situations — public accounting (auditing and/or tax), Internal Revenue Service, private industry, public utilities, law practice, and varied consulting situations.

Student goals include seeking self-help for personal financial and tax planning, preparation for entry into tax practice, re-enforcement and expansion of job skills in the corporate, public accounting or governmental areas, preparation for career change, and continuing education credits.

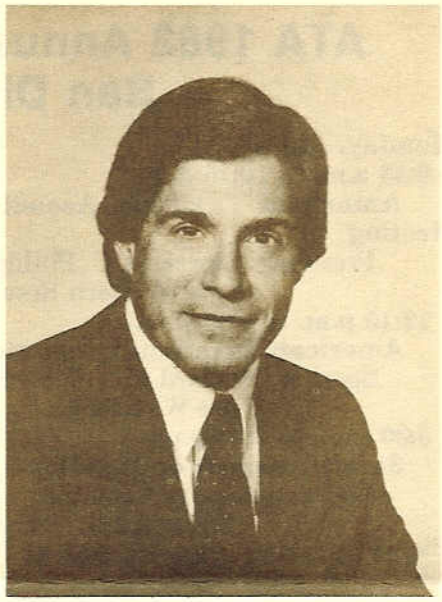
The heterogeneous nature of the student body, as well as the variety of business and human experience brought to the classroom, enhance an already stimulating learning environment.

Most of the classes are offered at night. Classes are usually offered on a Tuesday/Thursday or Monday/Wednesday evening schedule.

Further details can be obtained by contacting: School of Accountancy, College of Business Administration, Georgia State University, University Plaza, Atlanta, GA 30303, Telephone 404-658-2611.

Bernard M. "Bob" Shapiro to Address ATA at Annual Luncheon

Bob Shapiro is the National Director of Tax Policy of Price Waterhouse. Prior to joining the firm in 1981, he had been Chief of Staff of the Joint Committee on Taxation of the U.S.



Congress since 1977, where he was a staff member since 1967.

Bob received his B.A. with honors from Washington Lee University in 1964. He received his J.D. in 1967 and his LL.M. in taxation in 1970 from Georgetown University Law School. He is a Certified Public Accountant in Maryland and a Member of the Bar in the District of Columbia. Mr. Shapiro is an Adjunct Professor in the Graduate Tax Program at Georgetown University Law School, and has lectured on tax courses at Catholic University Law School. In addition, he has been a frequent speaker at various institutes, conferences, and other meetings, focusing on current developments in tax matters.

As National Director of Tax Policy, Mr. Shapiro has the responsibility for development and coordination of the firm's opinions concerning matters of tax policy and for articulating the firm's views on various tax proposals. His experience in advising the Congressional tax committees on technical aspects and potential economic effects of proposed legislation gives him a unique ability to provide a knowledgeable perspective and guidance on current matters involving tax issues and legislation.

Bob and his wife Pat and their two children, Lauren and Jill, make their home in Potomac, Maryland. He is originally from Richmond, Virginia.

The position of the U.S. Supreme Court also leads us to the conclusion that the conference system of settling disputes between CPAs and attorneys is vulnerable to attack on both antitrust and First Amendment grounds. It is difficult to believe that the Supreme Court would allow a system in which two professions have, in effect, met in conference and proceeded to carve out market shares of the available tax work. In addition, there are substantial First Amendment questions involved with this system because it clearly militates against competition or advertising.

The Independent CPA as Tax Advocate

One major objection to the presence of CPAs in the practice of tax law is that they cannot by the very nature of their profession and training be as effective as attorneys when a clear-cut advocacy position is desirable. This criticism was voiced very strongly by members of the organized bar when proposals were made by certain individuals within the accounting community to certify tax returns much in the same way that financial statements are certified.

The problem is the alleged contrasting nature of the attorney's position as an unqualified advocate for his client's interests and the CPA's role as independent auditor for financial statement purposes and as advocate for tax purposes. Canon 7 of the American Bar Association Code of Professional Responsibility leaves no doubt that an attorney is obligated to be a zealous advocate for his client's position within the bounds of lawful conduct. The attorney is obligated to exercise his or her best professional judgment in a manner consistent with the interests of his or her client. The attorney may choose any position favorable to the client within the bounds of the law, provided that it is reasonably supportable.

It is against this standard of unabashed advocacy that the CPA is compared and found to be wanting. Those who question the CPA's posture of advocacy begin with a historical argument based upon the relationship between a CPA and a client where the CPA is preparing a set of financial statements which will be certified. When engaged in this kind of activity the CPA is by definition not an advocate.

If the CPA is required to maintain a posture of independence in relation to an audit client, is it possible to be an advocate for the same client when advising on tax matters? To many commentators in the legal community, this mixing of identities presents an insuperable barrier to CPAs' assuming a posture of advocacy identical to that mandated for attorneys.

The issue of the CPA's independence in audit engagements and the effect of this attitude upon other areas of accounting services such as tax or management advisory services, is an issue that has been discussed in accounting literature for over fifty years. Some CPA's take the position that there is no inherent conflict between the attitude of independence in audit engagements and a position of advocacy in other types of engagements. Others approach the problem from a different perspective. They emphasize the constraints which govern the conduct of both attorneys and accountants and point out that attorneys are by no means without restraints in what they can do for their clients. A third group acknowledges the inherent contradiction involved when a CPA attempts to maintain a posture of independence and of advocacy for the same client, and recommends that an accountant should not serve as both an auditor and a tax advisor to the same client.

The CPA's role as an advocate is one which can be developed because the exigencies of tax practice require it. CPAs can vigorously defend their role in tax practice because there is no historical evidence to indicate that CPAs are any less effective or any less persuasive in representing a client in those forums where they practice than attorneys — even when the tax client also may be an audit client.

The CPA in Tax Court

Any taxpayer may represent himself in the Tax Court, as he may do in any other court, or he may be represented by an attorney or by another practitioner who has been admitted to practice before the Tax Court. Attorneys are admitted to the Tax Court if they are members in good standing of the highest court of any state, territory, or the District of Columbia, or a member of the bar of the Supreme Court of the United States. In order to become qualified to appear in the Tax Court, provided an attorney meets the mentioned qualifications, it is necessary only to contemporaneously file an application for admission.

Any other individual desiring to represent another before the Tax Court, such as a CPA, must meet the admission procedures set forth in Section 7452 of the Internal Revenue Code and the regulations issued thereunder. Under these regulations and the rules of the Tax Court itself, a non-attorney practitioner must submit an application for admission and submit three letters of recommendation. Additionally, the applicant must demonstrate technical competence by passing a written examination given by the clerk of the Tax Court each October in Washington, D.C.

The right which CPA's and others have to practice in the Tax Court has always been thought of as something of a mixed blessing in accounting circles. Most CPAs who are admitted to practice before the Tax Court have sought admission because they know that the vast majority of cases docketed with the Tax Court are never tried, but are settled before the trial date. Thus the capability to pursue the case through to its litigation stage, even though seldom exercised, provides the CPA Tax Court practitioner a continuing ability to assist his client further along on the settlement route.

The right to practice in the Tax Court provides the CPA with both an ethical dilemma and a practical dilemma. On the one hand, the CPA is forced to advise a client about his choice of forums at the litigation stage when in fact the average CPA, even if admitted to the Tax Court, may know very little about the relative hazards of litigation in the various forums open to the taxpayer. In addition, to be expert in the substance and application of the tax law may preclude developing an expertise in the procedural aspects of representing clients before the Tax Court.

The CPA as Investment Advisor

The federal securities laws do not contain any specific reference to "financial planners" per se. However, to the degree that a planner's activities deal with transactions in, or advice concerning, securities, he will be subject to one or more code sections from applicable securities statutes.

Accordingly, if the financial planner is called upon to render advice concerning securities, he may be an "investment adviser" within the purview of the Advisers Act, and thus required to comply with its provisions. In recent years CPA tax practitioners have increasingly been called upon to perform financial planning type services, particularly with respect to tax shelter advising, pension plan advising, and estate and gift tax planning. Therefore, it has become necessary for CPA tax practitioners to consider the conditions which, if satisfied, will require compliance with the Advisers Act, to understand the basic thrust of this Act, and to understand administrative and judicial interpretations under the Securities and Exchange Act of 1934 and the Securities Act of 1933.

A number of questions must be answered when determining whether a person must comply with the Advisers Act. First, does the activity engaged in make the person an investment adviser. Apparently the receipt of compensation and being engaged in business are prerequisites. However, the compensation need not be specifically allocated for investment advice and rendering advisory services need not constitute a person's sole or even primary business. Furthermore, it is not necessary to recommend specific securities in order for the definition of "investment adviser" to apply since the SEC has taken the position that, because of the language of the Act, rendering general advice on the desirability of investing in securities would be sufficient. Second, a person's advisory activities must be with respect to securities. The term "securities" is defined broadly to encompass an interest in virtually any common enterprise organized for profit where the profit is to come from the activity of other persons. Third, it is necessary to determine if a person who would be an "investment adviser" under the first two questions is statutorily excluded from compliance with the Act. Finally, it is necessary to determine whether an investment adviser is exempt from registering under the Act.

If a person's activities do not satisfy the definition, or if he is specifically excluded by one of the exclusions stated in the definitional section, he is clearly not subject to any provisions contained in the Act. On the other hand, the fact that a person is an investment adviser does not automatically mean that he will be subject to all of the substantive requirements of the Act. An adviser who is exempt from registering under the Act, with one exception, is exempt from most of the other provisions of the Act. The exception to the exemption is the Act's antifraud provisions, which apply to all investment advisers, whether or not they are registered or are required to be registered. If a person is an investment adviser and the exemptions from registration are inapplicable, the person is generally subject to all of the Act's regulatory mechanism.

In spite of the broad interpretation given to the relevant activities and to the term "securities," it may be argued that CPA tax practitioners may easily be brought within the scope of the Advisers Act. First, registration is required only if an investment adviser's advice, counsel, publications, writings, analyses, and reports are furnished and distributed, or if his contracts and other arrangements with clients are negotiated and performed, by the use of the mails and means of instrumentalities of interstate commerce. Second, the exclusion from the definition of the term "investment adviser" applies only if the advice provided is solely incidental to the professional practice of an accountant, lawyer, teacher, or engineer. Third, the exemption from registration is available only if an investment adviser's clients are all residents of the state in which the adviser maintains his principal office and place of business and provided no advice is given with respect to securities traded on a national securities exchange. Finally, the exemption from registration is available if an investment adviser has fewer than fifteen clients during the course of the preceding twelve months and neither holds himself out to the public as an investment adviser nor acts as an investment adviser to either an investment company or a business development company. It is possible that a significant number of practitioners would be within the scope of the Advisers Act due to these rules.

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1ST CLASS MAIL