

# AGENDA ITEM

## III.C. JULY 2017

**DATE:** July 13, 2017  
**TO:** Members, Audit Committee  
**FROM:** Elizabeth Parker, Executive Director  
**SUBJECT:** Changes to Committee Charter

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### EXECUTIVE SUMMARY

At its July 13, 2017, meeting the Executive Committee will consider revisions to the State Bar's Board Book primarily designed to effectuate recommendations of the 2017 Governance in the Public Interest Task Force (Task Force). As related to the Audit Committee however, Board Book revisions being considered do not stem from Task Force recommendations, but instead are primarily technical in nature, designed to better organize provisions regarding Audit Committee responsibilities. One substantive amendment is included in the proposed changes, however, reflecting an expansion of the role of the Committee to encompass a broader set of risk management and compliance oversight functions.

This agenda item presents proposed revisions to the Audit Committee charter and specifically asks the Committee to discuss and define its responsibilities as related to risk management and compliance. Pursuant to this discussion, the Committee may wish to propose additional Board Book revisions to the Executive Committee for consideration at its September meeting.

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### BACKGROUND

The full text of proposed Audit Committee charter amendments is provided as Attachment A. The expanded scope is reflected in the following provisions<sup>1</sup>:

*The Audit Committee is charged with overseeing risk management and compliance efforts.*

*AND*

*The Audit Committee will review the results of the biennial performance audit conducted by the State Bureau of Audits, and monitor the State Bar's implementation of the biennial performance audit recommendations, working with staff to identify other fiscal and operational initiatives, and best practices, to be undertaken.*

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<sup>1</sup> Another substantive change addresses the nature of the independent and direct line of communication between the Chief Financial Officer and the Audit Committee. That change is not discussed herein.

AND

*The Audit Committee will monitor, review, and evaluate a report on cybersecurity vulnerabilities.*

Committee discussion and input is needed to better define and operationalize this expanded scope.

## **DISCUSSION**

The proposed addition of risk management and compliance responsibilities for the Committee derives from a confluence of circumstances suggesting the need for a more focused and centralized responsibility for risk management and compliance within both the Bar's staff organizational and oversight structures. On several recent occasions, instances have been discovered where policies are inconsistent, promulgated by sub-entities without staff or Board review, in conflict with statutory guidance, or absent altogether. While these risks have been identified on an ad hoc basis, the Bar needs a better way to institutionalize management's responsibility for developing, maintaining, and reviewing all internal policies to ensure that they are up-to-date, consistent with the Bar's redefined public protection mission, and properly implemented. These efforts will begin with a refinement of the purpose and concentration of the Office of Research and Institutional Accountability, which is charged with the kinds of compliance responsibilities contemplated, along with other functions housed within the Executive Director's Office. A parallel effort to establish a clear risk management and compliance oversight role for the Board of Trustees, with responsibility assigned to the Audit Committee, is also needed.

Several factors support assigning the compliance review and risk management role to the Audit Committee. The Committee's traditional role is related to oversight of the annual financial statement audit process, a responsibility that will of course continue. However, additional potential risks, beyond those that might be uncovered by a financial statement audit, abound. The Audit Committee is well suited to be the governance entity that works with staff to develop a risk management and compliance workplan which addresses issues including policy and rule compliance, cyber security, and other important high risk areas for the Bar. The Committee would also be tasked with overseeing staff implementation of that workplan on an annual basis.

## **FISCAL/PERSONNEL IMPACT**

None

## **RULE AMENDMENTS**

None

## **BOARD BOOK IMPACT**

None

## **BOARD GOALS & OBJECTIVES**

Implement and pursue governance, composition, and operations reforms needed to ensure that the Boards structure and processes optimally align with the State Bar's public protection mission.

## **BOARD COMMITTEE RECOMMENDATIONS**

None

## **ATTACHMENT(S) LIST**

- A.** Proposed Amendments, Audit Committee Charter

**Article 68**  
**CHARTER FOR AUDIT COMMITTEE**

~~Section 1: Creation~~

~~The Board of Trustees created a "State Bar Audit Committee" to oversee the hiring and supervision of the financial auditors pursuant to Business and Professions Code §§ 6145 and 6222, which require that the State Bar submit a copy of its audited financial statements within 120 days of the close of the fiscal year to the Board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Judiciary Committees.~~

~~Section 2: Charter for Audit Committee~~

~~Delegation of Authority to the State Bar Audit Committee~~

~~I.~~

~~**Charge:** The State Bar~~ Audit Committee is charged with overseeing all risk management and compliance efforts. The Audit Committee has a goal of including at least one public member of the Board of Trustees.

~~I.~~

The Audit Committee will:

- Undertake ~~, to include all of~~ the following responsibilities relating to external audits:
  - Recommend appointment of outside auditors for the State Bar's annual financial statement audit, taking into account the recommendation of the Executive Director and Chief Financial Officer, for approval by the full Board of Trustees.
  - Evaluate the independence of outside auditors, including recent or planned future engagement by the State Bar for non-audit services.
  - Review and approve the annual financial statement audit scope and fees.
  - Monitor the progress of the annual financial statement audit.
  - Evaluate the report of the outside auditors regarding the results of the annual financial statement audit.
  - Serve as a direct communications link between the Board of Trustees and the independent auditor.
  - Ensure that control weaknesses and legal compliance violations identified in the course of the annual financial statement audit are promptly and effectively remedied.
  - Monitor the State Bar's implementation of the annual financial statement audit recommendations, working with staff to identify other compliance initiatives that should be undertaken.
- Reviewing the results of the biennial performance audit conducted by the State Bureau of Audits, and monitoring the State Bar's implementation of the biennial performance audit recommendations, working with staff to identify other fiscal and operational initiatives, and best practices, to be undertaken.
- On an ongoing basis, monitor, review and evaluate the adequacy of the State Bar's internal control structure.

- Annually monitor, review and evaluate ing a report on cybersecurity vulnerabilities.
- Reviewing reports of external auditors or consultants engaged for specific purposes.
- Meet independently with the Chief Financial Officer who is charged with presenting all material matters to the Audit Committee not satisfactorily resolved by the senior executive team; the Chief Financial Officer shall have direct access to the Board of Trustees on all financial matters, is authorized to meet with the Audit Committee outside the presence of other senior executive team members at Audit Committee meetings, and, if more expedient, may meet with the Audit Committee Chair.

~~1. Selecting the independent auditor for the State Bar's annual financial statement audit;~~

~~2. Monitoring the progress of the financial statement audit;~~

~~3. Evaluating the results of the financial statement audit;~~

~~4. Ensuring that control weaknesses and legal compliance violations identified in the course of the financial statement audit are promptly and effectively remedied;~~

~~5. Serving as a direct communications link between the Board of Trustees and the independent auditor; and~~

~~6.1. \_\_\_\_\_~~

~~2. Monitoring the adequacy of the State Bar's internal control structure on an ongoing basis.~~

~~7.3. reviewing or monitoring the Bar's implementation of audit recommendations and working with staff to identify other compliance initiatives to be undertaken annually.~~

Access to Information: The State Bar Audit Committee may request any independent auditor, expert, officer, trustee, agent or employee of the State Bar to appear before it to report on the financial condition of the State Bar and answer any questions the Audit Committee might have, relating to the accomplishment of its responsibilities enumerated above. ~~under section I.A.~~

Limitations on the Role and Responsibility of the ~~State Bar~~ Audit Committee:

- Oversight Scope Defined: The role and responsibility of the State Bar Audit Committee is oversight, not preparation or operation. State Bar Management is responsible for preparing the financial statements, governmental and other reports of the State Bar, for operating the State Bar, including its financial and accounting systems, and for assuring compliance with applicable laws and with policies and procedures established by the Board. The outside auditors are responsible for auditing the financial statements and such other functions as they are specifically engaged to audit.
- Reliance on Management, Auditor, and Advisory Information: In carrying out its oversight function, the State Bar Audit Committee is not expected to provide expert or special assurance as to the State Bar's financial statements or professional certification as to the work of the State Bar's staff or of the outside auditors. In discharging their duties, the members of the State Bar Audit Committee may rely on information, opinions, reports or statements, including financial statements or other financial data, prepared or presented by officers, employees, internal or external counsel, public accountants, committees of the board duly designated with authority in particular areas, or other persons whom the member believes are reliable and competent in the matters presented, provided that in so relying the member is acting in good faith and with that degree of diligence, care and skill which ordinarily prudent ~~the~~ State Bar Audit Committee members would exercise under similar circumstances.

~~B. The Chief Financial Officer is charged with presenting all material matters to the State Bar Audit Committee not satisfactorily resolved by State Bar Management, including expedient contact with the State Bar Audit Committee Chairperson when necessary. The CFO shall have direct access to the Board of Trustees on all financial matters and will meet with the Audit Committee without the presence of Executive Staff at each Audit Meeting.~~

~~II. Customary Activities of the State Bar Audit Committee~~

~~The following functions are appropriate common recurring activities of the State Bar Audit Committee in carrying out its oversight function:~~

~~A. External Audit:~~

- ~~1. Recommend appointment of the external auditors, taking into account the recommendation of the Executive Director and Chief Financial Officer, for approval by the full Board of Trustees.~~
- ~~2. Review and approve the annual audit scope and fees of the external auditors.~~

- ~~3. Evaluate the independence of the external auditors, including their recent or planned future engagement by the State Bar for non-audit services.~~
- ~~4. Evaluate the report of the external auditors regarding the results of the annual audit including, but not limited to:~~
  - ~~a. The audited financial statements and management letter recommendations and Management's responses thereto.~~
  - ~~b. The adequacy of the State Bar's system of internal controls.~~
  - ~~c. Management's cooperation with the external auditors.~~
  - ~~— The adequacy of the State Bar's accounting policies and practices, including the level of compliance with governmental regulations and with recent professional pronouncements and their impact on the financial statements.~~

~~B. Financial Management:~~

- ~~1. Review and evaluate Management's determination of the adequacy of the State Bar's system of internal controls and the extent to which recommendations made by external auditors have been implemented.~~
- ~~Review the results of the biennial performance audit conducted by the State Bureau of Audits.~~
- ~~2. Review reports of external auditors or consultants engaged for specific purposes.~~

Other Functions of the ~~State Bar~~ Audit Committee:

- ~~• Provide advice and counsel to the Executive Director and Chief Financial Officer.~~
- ~~• Perform such specific oversight functions as expressly requested by the Board of Trustees.~~
- ~~• Quarterly review, on a quarterly basis, of the reports prepared by the Office of Finance regarding Senior Executives' and Trustees' Board Members' travel and expense reimbursements, which includes summaries of expenditures.~~

~~The Audit Committee is chaired by the Treasurer and should have the goal of including at least one public member of the Board of Trustees.~~

(Source: Board of Governors' Resolutions, October 2004, July 2005; Board of Trustees Resolution, July 2014; Audit Committee Resolution, January 16, 2015, ratified by ~~the~~ Board of Trustees Resolution, May 13, 2016.)



**Historical Note**

~~At its July 2014 meeting, the Board of Trustees adopted the Board Executive Committee charter that makes the Audit Committee subject to Executive Committee oversight, meaning that the Audit Committee will generally report to the Executive Committee rather than the full Board, except where Board action is needed.~~

~~The Audit Committee maintain its functions, but the Board repealed the appointment structure that was established for Audit, which required that the following board members be appointed to the Audit Committee: the President, who shall be chair, a 1st year member, a 2nd year member, two 3rd year members and a public member, each of whom shall serve on this committee throughout his/her term on the Board. In 2013, the Board acted to provide that the Treasurer is to serve as Chair of the Audit Committee. The charter also continues to state that the committee should have at least one public member.~~

~~At its November 2016 meeting, the Board of Trustees moved oversight of the Audit Committee from the Board Executive Committee to the Board of Trustees.~~