



The State Bar of California

CLOSING

II.A. Risk-Based Regulation
11-03-21 SAGE Meeting
Open Session

WORKING GROUP

DATE: November 1, 2021

TO: SAGE Subcommittee, Closing the Justice Gap Working Group

FROM: Bridget Gramme, Deputy Chief of Programs

SUBJECT: II.A. Recommendations for a Risk-Based Approach to Regulation for a Sandbox

INTRODUCTION

At the October 18, 2021 full working group meeting, SAGE presented five general principles for a risk-based regulatory approach to the sandbox. The group voted on the first two, and referred items 3-5 back to the SAGE subcommittee for further refinement in light of the discussion at the working group.

The text of the three resolutions for further refinement are listed below.

REGULATORY FRAMEWORK

3. Lawyers participating in sandbox entities should remain subject to the same rules and laws governing other licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.
4. Entities participating in the sandbox should be subject to the rules and laws governing licensees of the State Bar except to the extent that compliance with specified rules is waived as a condition of entry into the sandbox.¹
5. The working group will separately consider the scope and mechanism of possible rule and/or statutory waivers.²

¹ See e.g. Business and Prof. Code § 6167 (requiring law corporations to “observe and be bound by such statutes, rules, and regulations to the same extent as if specifically designated therein as a licensee of the State Bar.”)

² As was discussed at the subcommittee meeting, the ability of the sandbox regulator to exempt a sandbox participant from any statutory requirements would exist only to the extent the Legislature makes statutory amendments expressly authorizing the regulator to make such an exemption. The Office of General Counsel is conducting legal research to present to the Working Group on whether legislation could be crafted to accomplish such an exemption by the regulator.