



Activity Review

North Carolina State Board of Certified Public Accountant Examiners

1101 Oberlin Road, Suite 104 • PO Box 12827 • Raleigh, NC 27605 • 919-733-4222 • No. 12-2008

Important December Deadlines

December 31, 2008, is the deadline for submitting 2009 CPA firm renewal and peer review compliance information to the Board and is the date by which CPAs must complete the CPE requirement to be eligible for certificate renewal for the 2009-2010 license period.

In November, the Board notified all registered firms that the firms must renew their registrations and provide peer review compliance information online through the Board's web site, www.nccpaboard.gov.

For additional information regarding the online firm renewal/peer review compliance process, please see the November 2008 issue of the *Activity Review*.

If a CPA firm fails to comply with any part of 21 NCAC 08J, *Renewals and Registrations* or 21 NCAC 08M, *Peer Review Program*, the Board may take disciplinary action against the CPA firm's members as specified in 21 NCAC 08J .0111 and 21 NCAC 08M .0106.

Such action may include a conditional license, civil penalty, and suspension of each CPA firm member's CPA certificate.

To be eligible for certificate renewal in 2009, active licensees must complete the CPE requirement by December 31, 2008.

As part of the annual CPE requirement, active licensees must complete at least eight hours of non-self-study CPE each year. All active licensees must also complete either a Board-approved two-

hour group-study course or a Board-approved four-hour self-study course on professional ethics and conduct.

A non-resident licensee may satisfy this requirement by completing the ethics requirements in the jurisdiction in which he or she is licensed and works or resides.

If there is no ethics CPE requirement in the jurisdiction in which the individual is licensed and resides or works, he or she must complete one of the Board's approved ethics CPE courses.

A complete list of Board-approved ethics CPE courses is available on the Board's web site, www.nccpaboard.gov.

If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year, but completes them by June 30, the Board may issue a letter of warning for the first such failure within a five calendar year period.

For the second such failure within a five calendar year period, the Board may deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 .

If you have questions about firm renewal, peer review compliance, or the CPE requirement, you may contact Cammie Emery by phone at (919) 733-1423 or by e-mail at cemery@nccpaboard.gov or you may contact Buck Winslow by phone at (919) 733-1421 or by e-mail at buckw@nccpaboard.gov.

Renewal of Notification of Intent to Practice Permits

At its October 20, 2008, meeting, the Board voted to automatically renew all Notification of Intent to Practice permits* currently on file with the Board.

This is the third year that the Board has eliminated the need for Notification of Intent to Practice permit holders to submit a renewal form and renewal fee.

Each permit holder is encouraged to check his or her licensing record on the Board's web site, www.nccpaboard.gov, to make sure that his or her contact information is correct. If the contact information is not correct, please use the online address change feature to update the contact information.

If you have questions, please contact Buck Winslow by telephone at (919) 733-1421 or by e-mail at buckw@nccpaboard.gov.

*All permits with an expiration date of 12/31/2008 have been automatically renewed to an expiration date of 12/31/2009.

www.nccpaboard.gov

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Declaratory Ruling

Declaratory Rulings set no precedents and are limited to the facts of the request and may be relied upon only by the requesting party.

PETITIONER: Crowe Chizek & Company LLC (“Crowe”)
PO Box 3697
Oakbrook, Illinois 60522-3697

RE: Including Network Name in Partnership Firm Name

DATE REQUESTED: May 16, 2008

QUESTION: Crowe is a member of Horwath International, an association or network of businesses which includes, but is not limited to, registered accounting firms. Although an individual CPA named Horwath was a partner in a registered CPA firm named Laventhol and Horwath, the individual named Horwath is deceased and his CPA firm was dissolved through bankruptcy proceedings. Neither the deceased individual nor the demised firm has been partners in Crowe or any CPA firm named Horwath International.

Can Crowe include “Horwath,” a brand name based upon a deceased CPA, in its partnership firm name even though no individual licensee named “Horwath” was ever a partner in Crowe and the entity which owns the Horwath brand, “Horwath International,” is a non-owner and is not authorized to practice public accountancy anywhere in the world?

ANSWER: No.

I. Procedural History

On October 1, 2007, Crowe Chizek & Company, LLC (but registered in North Carolina as Crowe Chizek & Company, PLLC) (“Crowe”) informed the Board staff that the firm desired to change its name to Crowe Horwath LLP. By letter dated November 16, 2007, the Board staff indicated its belief that the name change appeared to be contrary to the law because the use of “Horwath” in the firm name could have the capacity or tendency to deceive the public.

On May 16, 2008, Crowe submitted a Declaratory Ruling request. By consent the Board’s hearing on the request commenced on July 19, 2008. Because of the large volume of new documents provided by Crowe at that hearing, by agreement, the Board reconvened the hearing on September 22, 2008.

II. Summary of Contentions

In support of its request, Crowe asserts that in order to compete effectively in a

global economy, Crowe became a member firm of Horwath International which is composed of over one hundred “independent” member firms from various countries around the world, each practicing according to local laws and customs. Crowe claims that use of “Horwath” in the firm name was a conforming use of the Horwath brand and was being imposed as a condition of membership in the organization. The Board’s staff presented evidence that an officer of Crowe chaired the Horwath International marketing committee which had agreed upon the requirement, and that the applicable Board rules already allow Crowe to freely market its relationship with Horwath International by reference to its network membership in its letterhead and marketing materials.

Crowe also contends that the proposed name is not deceptive. At the July hearing, Crowe offered the opinion of a professor of marketing that the firm’s use of the Horwath brand could help the firm compete and that clients would not be deceived because of the firm’s proposed use of disclosure language in its engagement agreements. On the other hand, the Board’s staff noted that the Board’s duty is not just to protect clients, but also the members of the public who rely upon Crowe’s reports yet might not see the disclosures in engagement letters. Additionally, the American Institute of Certified Public Accountants (AICPA) has studied this issue and appears to have reached the conclusion that disclosure is an inadequate safeguard. Further, even though this declaratory ruling involves a hypothetical firm, the Board’s staff also presented substantial evidence that the proposed name has the capacity or tendency to deceive in several ways. For example, the staff presented evidence that clients and the public have already been misled to believe that Horwath International is, itself, a bona fide accounting firm (it is not), that the partners of the member firms are in partnership with each other (they are not), and that Horwath International has a long heritage of nearly a century as a professional services firm (it does not).

Crowe additionally urges unless it is allowed to include “Horwath” in its partnership name, it will not be able to compete effectively with other “grandfathered” firms such as BDO Seidman LLP, Grant Thornton LLP, or KPMG LLP. Crowe further asserts that there are no reasonable

differences with the grandfathered firm names. The Board’s staff pointed out that those other firms are substantively different from Crowe’s proposed situation and that North Carolina courts have recently upheld the Board’s “grandfathering” rules against a similar attack.

Finally, Crowe has asserted the Board should rule that the proposed name is not deceptive because a majority of other states have already “approved” the name. By contrast, the Board’s staff pointed out that it is still unclear how many states have formally “approved” the proposed name, that not all states have done so, and that not only the base facts but also the applicable laws are different from state to state.

III. Applicable Statutes and Rules

Although Crowe argues otherwise, this interpretation should not be limited to the application of one or two rules out of context. Thus the answer to Crowe’s request involves several statutes and rules, including: NC Gen. Stat. § 93-12 (CPA Board powers); NC Gen. Stat. § 150B-2(6) (person aggrieved); NC Gen. Stat. § 55B-5 (Professional Corporation names); NC Gen. Stat. § 55D-20(b); NC Gen. Stat. § 59-84.3 (names of registered limited liability partnerships); 21 NCAC 08N .0202 (defining deception); 21 NCAC 08N .0302(a) (forms of practice); 21 NCAC 08N .0307 (firm names); 21 NCAC 08K .0201(c) (use of CPA in firm name); as well as other rules and standards of practice applicable to all registered firms.

In particular, 21 NCAC 08N .0307 states in pertinent part:

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive. The name of one or more former members of the CPA firm, as defined in 21 NCAC 08A .0301, may be included in the CPA firm name. The name of a non-CPA owner in a CPA firm name is prohibited.

(b) Style of Practice. It is considered misleading if a CPA firm practices under a name or style which would tend to imply the existence of a partnership or registered limited liability partnership ... of more than one CPA shareholder or CPA member or an association when in fact there is no partnership nor is there more than

one CPA shareholder or CPA member of a CPA firm....

Further, 21 NCAC 08N .0202 which states in pertinent part:

(a) Deception Defined. A CPA shall not engage in deceptive conduct. Deception includes fraud or misrepresentation and representations or omissions which a CPA either knows or should know have a capacity or tendency to deceive. Deceptive conduct is prohibited whether or not anyone has been actually deceived.

IV. Discussion, Findings and Conclusions of Law

Based upon the record, including hundreds of pages of exhibits submitted by Crowe and by the Board's staff, as well as the information received at the hearings on this matter, the Board rules for the reasons set out below that the proposed name "Crowe Horwath, LLP" has the capacity or tendency to deceive the public and thus would be contrary to applicable North Carolina statutes and rules.

A. The proposed name, in and of itself, would have the capacity or tendency to deceive because the "Horwath" is not the name of a present or former partner, but is only a brand owned by a third party non-licensee non-owner.

Rule 21 NCAC 08N .0307(a) only expressly permits CPA firms to bear the names of "present or former members of the CPA firm." Rule 21 NCAC 08A .0301(b)(25) defines "Member of a CPA firm" as "any CPA who has an equity ownership interest in a CPA firm." Crowe concedes that "Horwath" is not a present or former member of the firm, nor a predecessor firm, but argues that the Board should interpret that provision in the rule as permissive rather than exclusive, and, instead, evaluate the proposed name on the basis of whether or not it is deceptive. Even if that is the correct approach, the proposed name is unacceptable because including "Horwath" in the name does not accurately describe Crowe as member of the Horwath International network; it would proclaim that something or someone named "Horwath" is or was a licensee and is or was a partner in the firm. In line with this rule is the statute which requires that only the names of general partners can be in the name of a limited liability partnership. NC Gen. Stat. § 55D-20(b) (name of a limited partnership shall not contain the name of a limited partner).

Crowe, itself, has limited, or no vested, protectable right in the name "Horwath." Crowe, does not actually own the brand "Horwath." The record shows that the

"Horwath" trademark is owned by a non-CPA entity called Horwath International Registration, Ltd. Corporation, pursuant to a registration dated October 16, 1990. One month later, the accounting firm of Laventhol and Horwath filed for bankruptcy which ended in liquidation in 1992. At that time, there were still unresolved issues with this Board regarding allegations of substandard audit work by the firm of Laventhol and Horwath. It appears that approval of the proposed name would provide Crowe with the benefit of a "Horwath" brand identification without the financial or regulatory burden of responsibility for the prior entity's conduct. Thus, although coincidentally, the name "Horwath" happens to be the name of a deceased licensee, the brand name "Horwath" is neither a living licensee nor a natural person nor a person with a past or present ownership interest in the firm Crowe Horwath LLP. Crowe has conceded in the record that "Horwath" never has had an equity interest in Crowe.

The "Horwath" in Crowe's partnership name is a brand name also used by hundreds of businesses who are not now, never have been, and legally never could be the same as the other names in the firm's name: owner-licensees. To the extent the names in a professional partnership still communicate to the public all that goes with the status of owner-licensee, as partnership names have done for over one hundred years of accountancy regulation, the addition of "Horwath" in Crowe's firm name would not merely "have the capacity or tendency to deceive," but would be false. Our courts have repeatedly upheld narrow restrictions on commercial speech, and, indeed, quite recently made it clear that there is no right to use a deceptive, much less a false name in a partnership name.

As the Kansas Board of Accountancy initially determined in response to Crowe:

It is further understood that the name "Horwath" refers to an individual who is deceased and who is not personally affiliated with Crowe Horwath LLP. Respondent has provided no information to suggest that Mr. Horwath was a past partner, member or shareholder of Crowe Chizek and Company LLC or Crowe Horwath LLP.

In reasoning that is consistent with this Board's, the Kansas Board also initially determined that the proposed name was unacceptable because:

...such a name may not include the name of an individual who is neither a present nor a past partner, member or shareholder of the firm or its pre-

decessor and it may not include the name of an individual who is not a certified public accountant.

Crowe has appealed the Kansas ruling, but the reasoning of the Kansas Board still appears sound.

Although Crowe expressly referenced the AICPA Model Code of Conduct at the hearing on this request (Hr'g Tr. 55-57, 93, 133, Jul. 21, 2008), that revision to the Code has not yet been adopted either by the AICPA or, by reference, this Board, and still appears to prohibit precisely the name change Crowe proposes. Indeed, the current AICPA Model Rule of Conduct has been expressly interpreted to prohibit the sort of name which Crowe now requests. As provided in the current interpretations:

179. Practice of Public Accounting under Name of Association or Group .357 Question—Several CPA firms wish to form an association or group whereby certain joint advertising, training, professional development and management assistance will take place. The firms will otherwise remain separate and distinct. Would it

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2009 Board Meetings

January 20
February 16
March 25*
April 21
May 18
June 24**
July 20
August 19
September 21
October 19
November 18
December 17

Unless otherwise noted, meetings are held at the Board office at 1101 Oberlin Road, Raleigh, and begin at 10:00 a.m.

Meetings of the Board are open to the public except, when under State law, some portions may be closed to the public.

The agenda for each meeting is posted on the Board's web site, www.nccpaboard.gov, approximately five (5) business days prior to the meeting.

*1:00 p.m.
**Greensboro

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be proper for such firms to practice public accounting under the name of an association or group in the United States?

.358 Answer—The practice of public accounting under such a name in the United States is not permitted since it would be likely to confuse the public as to the nature of the actual relationship which exists among the firms. Instead, each firm should practice only in its own firm name and may indicate the association or group name elsewhere on the firm stationery. Each firm may also list on its stationery the names of the other firms in the association or group.

The change which Crowe cites in response to the Board's concerns about the lack of independence within the network, if approved, would not be effective until December 2010. Implementation in this state would likely require rule changes including a new definition of the term "firm." In short, Crowe's reliance on the AICPA Model Code as a justification for the proposed name change is misplaced or premature.

B. The record includes substantial evidence that the proposed name has the "capacity or tendency to deceive."

This Board's rule on deceptive firm names is narrowly drawn and does not prevent Crowe from communicating any truthful information. Nothing in the North Carolina laws and rules restricts Crowe from truthfully marketing its actual relationship with the Horwath International network or from truthfully marketing itself as part of a large, worldwide network of firms. The rules only prohibit firm names and marketing which have a capacity or tendency to deceive. Aside from the obvious (that no licensee named Horwath ever was a partner in the Crowe firm), there is also substantial evidence in the record that the use of "Horwath" in the actual firm's name has the capacity or tendency to deceive the public.

Although it is often difficult to have "evidence" of how a hypothetical name is deceptive, under the rules previously cited, the Board must only determine whether a proposed firm name has the "capacity or tendency to deceive." In light of that standard under the rules and the Court of Appeals holding in *McGladrey & Pullen, LLP v. N.C. State Bd. of CPA Examiners*, 171 N.C. App. 610, 615 S.E.2d 339 (2005) which upheld the Board's finding that a proposed firm name had a capacity or ten-

dency to deceive based on similar facts, the record contains substantial evidence of a "capacity or tendency to deceive."

(1) The adoption of the network name "Horwath" in Crowe's partnership name has a capacity or tendency to deceive the public because "Horwath" already portrays itself as a real accounting "firm" even though it is not. The record includes numerous overt representations by Horwath International as well as current members of its network. Indeed, Horwath International's self-proclaimed "vision" is to be known as a professional services firm. The record further shows that as a result third party and press reports have incorrectly portrayed Horwath International as a "firm" when, of course, it is not. Indeed, as was the case in *McGladrey*, the Record includes SEC filings identifying Horwath International as an independent auditor.

(2) The adoption of the network name "Horwath" in Crowe's partnership name has a capacity or tendency to deceive employees, clients, and the public because Horwath International already portrays the principals of the firms in its network as "partners" when, in fact, Crowe concedes that they are *not* partners. Again, the record includes Horwath International members' own websites containing statements to the effect that they have over 15,000 "partners" in Horwath International. The record includes third party and press reports indicating that the public already has misperceived the relationship of the individual owners of the member firms as partners in Horwath International.

(3) Horwath International as well as some of its current network members encourages the erroneous impression that it has a long heritage of nearly a century of providing accounting services. The record shows that the actual history of Horwath International is quite different. Horwath International was at most a spin-off of Laventhol and Horwath which went bankrupt in the early 1990s. It appears from the record that at that time, every effort was made to distinguish Horwath International as an entirely separate entity whose assets, if any, and membership, if any, were entirely separate from the firm Laventhol and Horwath. There appears to be no direct legal connection between Laventhol and Horwath or Horwath and Horwath as predecessor firms or owners of Horwath International. It is noteworthy, despite Horwath International's attempts to tie its claim to a century of history based upon its rights to the name Horwath, the 1990 trademark registration disclosed that its *first use in commerce* was in 1989.

(4) The adoption of the network name "Horwath" in Crowe's partnership name

has a capacity or tendency to deceive the public because Horwath International already portrays itself as a large professional accounting entity even though it is not. The record includes representations by Horwath International in its newsletters and on its website as well as by current members of its network to the effect that it is an accounting or "professional services firm." The record also includes third party and press reports incorrectly concluding that the Horwath International network is a professional accounting entity when, of course, it is not. The record shows that, in fact, Horwath International includes numerous non-accounting firms such as investment advisors, bankers, and other entities not regulated under any state or country's accountancy licensing laws. The record includes substantial evidence such as SEC filings and press accounts showing that clients and the public already misperceive the true nature of the Horwath International network. In the *McGladrey* case, the Court of Appeals cited similar evidence in support of the Board's finding that the proposed name had a capacity or tendency to deceive. 171 N.C. App. at 615-16, 615 S.E.2d at 343. There the public mistakenly believed non-accounting affiliates of RSM International were CPA firms. *Id.*

(5) The deceptive capacity in the use of "Horwath" is compounded by the potential that not only consumers, but the public (third parties who rely upon CPA firms' audits and other attest work) would also assume that affiliated entities also bearing the brand name "Horwath" are also qualified as licensees and obligated to comply with professional standards such as those requiring licensees to be independent or objective. Other concerns include: (a) Horwath International apparently has the sway over its members such as Crowe to "mandate" use of "Horwath" in its partnership name despite the prohibition against a licensee subordinating its judgment to the will of a non-licensee; (b) unlike distant offices within a traditional CPA firm, the members of the network apparently do not agree to observe the independence requirements that are fundamental to attest services; (c) unlike traditional CPA firms, the Horwath association (or network) would not be subject to a peer review; and (d) unlike traditional CPA firms, the unlicensed members of the Horwath network who render professional services in this state apparently would not agree to be subject to the Board's jurisdiction.

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Certificates Issued

At its November 17, 2008, meeting, the Board approved the following applications for licensure:

Ryan Joseph Adkins
Lindsey Kay Angus
Jeanette Danielle Atkins
Brandon Allynn Barkley
Michael Joseph Bodah
Jennifer Brooke Bosley
David Wilson Bryan
Edward Paul Byron
Jessica Liz Capitaine
Rita Hope Carroll
Branden Wilson Chopelas
Paul Brandon Coble
Ivanna Lafinis Cole
Brittainy Hardin Crawford
Bradley Shuford Crossley
Paul Edwin Daniel, Jr.
Sarah Rebecca Davidson
E. Michelle Davis
Elizabeth Smith Demm
Angela Maria DePoy
Debbie Kay Dryer
Carole A. Earwood
Josette Renee Edwards
Karanda Velvet Fletcher
Amy Lynn Ford
Andrew Charles Francis
Deidra M. Francis
Lyndi Kathryn Freund
Lisa Michelle Goerke
Jason Ross Golenbiewski
Sumiko Saito Greer
William Benjamin Havird
Natalie Stevison Henley
Christopher David Holland
Amy Williams Howard
Nancy Jean Hune
John Francis Izzo
Debra Ann Jensen
Katherine Taylor Jones
John Dickson Jordan, III
Peter William Knerr
Hunter Brandon Lane
Eleanor Caperton Lauver
Hayden Miles Lee
Larry Lee, Jr.
Lisa Nicole Lewis
Xiaoran Lu
Diana Reynolds Mahaffey
Kristen Amy Maier
Michael Joseph McLaughlin, Jr.
Brian Andrew Messer
Robert Patrick Messing
George Wright Meyer, III
Stephen Andrew Justin Mills
Venus Layvette Moore
Johanna Elise Morrison
Luciana Suehara Mullen
Sarah Lewis Murphy
Brianna Sue Myers
Maria Anna Newell
Tara Christie Notaro
Jacqueline Anne O'Connell
Richard D. Offield
Shawn Anita Pack
Hannah Sadler Panella
Bradley Copper Patterson
Aaron Lance Pearson
Megan Ashley Phillips
Kevin Edward Quinn
Carolyn Devine Saint
David Charles Schwartz
Mary Jane Shafer
Laura Nicole Smallwood
Brittany Lynn Smith
Elizabeth Anne Smith
Patricia Gale Smith
Darrin Lamont Spears
Pamela Susan Stearns
Gregory Alan Stevenson, Jr.
Ashley Christine Sullivan
Patricia Ann Sutherland
Malcolm Carvel Taylor
Amy Brisson Thompson
Kendall Overcash Tyson
Jonathan James Vitello
Meredith Ashley Snyder Walser
Sunny Rae Ward
Marion Patricia White
Sean Donald Wilbur
David Lamar Willis
Paul Michael Wolff
Kenneth Bradford Wooten
Willard Henry Young
Michael Moneir Zahabi

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C. Crowe's proposed arrangement is not identical to the other firms it cites.

Crowe has urged that its proposed name is like the names of other similarly situated firms licensed in North Carolina. For example, Crowe argues that "Laventhol & Horwath's international affiliate was Horwath & Horwath International, similar to KPMG and KPMG International as well as BDO Seidman, LLP and BDO International." Every firm identified by Crowe falls into one or more of the following categories that make each substantially different from Crowe: (1) the firm name was grandfathered pursuant to Board rules adopted in 1999; (2) the firm name is a combination of names from firms that actually merged; and, (3) the affiliated international entity's name was derived from the CPA firm's name (rather than vice versa as would be the case for Crowe). As explained above, Crowe's proposed name is new and not qualified for grandfathering, Crowe is not merging with "Horwath" and the international network, and Crowe would have no right to the "Horwath" name except as a licensee. In line with the rules, this Board's application of its grandfathering rule, NC Gen. Stat. § 55B-5 provides that the Board may limit the names that professional corporations may use, but such regulations "may not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes and with the pertinent licensing board regulations in effect at the date of such adoption." Regardless, the *McGladrey* decision suffices as the last word on this point. In *McGladrey*, the Court of Appeals held that this Board's treatment of firms such as Grant Thornton is "easily distinguishable" because those firms are international public accounting firms as opposed to networks of accounting and non-accounting firms. *McGladrey*, 171 N.C. App. at 616-17, 615 S.E.2d at 343-44. Crowe argues that although it is identical to these other firms, and that it is different from *McGladrey*, yet, unlike *McGladrey*, Crowe has refused to provide copies of agreements or other documents which would assist the Board in understanding the true nature of the relationship among the various CPA firm members, non-CPA members and the Horwath network.

Crowe contends that it should be allowed to use a non-licensee, non-owner brand name so that it can compete with the larger accounting firms in international

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commerce. Crowe has not presented evidence of a single potential client it has lost as a result of the Board's rule. The registered CPA firms mentioned in Crowe's ruling request are real "firms." Horwath International is *not* a "firm," much less a CPA firm – it is only a network or association of firms. The difference between a bona fide CPA firm and Horwath International is substantial and confusing. And, according to the information provided by Crowe, although some members are accounting firms, many members are nowhere authorized to engage in the practice of public accounting, but offer a variety of other services. Regardless of whether or not the network members are licensed as CPA or Chartered Accountant firms, Crowe indicates that the marketing plan is to brand all members collectively under the banner of "Horwath."

The record shows that other professions such as attorneys have required professional corporations to render services through partnerships bearing only the names of living or deceased licensed professionals who are practicing or once practiced in the firm, owned the firm, were individually liable for the firm's professional negligence, were personally responsible for the firm's compliance with professional standards, shared in the profits and losses of the firm, and individually obeyed the laws and rules that every other partner had to obey. For the traditional accounting firm mentioned by Crowe, those presumptions remain valid for the members of the firm. Yet, Crowe admits in the record that such would not be true for other member firms in the network bearing the brand name "Horwath." This is not a technical difference. This is a substantive difference deeply rooted in the statutes and rules as well as the common law. If it were of no matter, and it were permissible to insert a brand name into a partnership's name as though the plethora of unlicensed businesses it stood for were the same as real partners, then there would be little meaning or purpose for professional corporations, limited liability partnerships, or professional limited liability companies. Crowe's desire to compete internationally is commendable, but it does not have a right to include the name of a non-owner, non-licensee brand name it does not own in its partnership name in order to make it appear to be a CPA firm as big as competing international accounting firms when it is not.

D. Crowe's claim that other states' have already approved its proposed name

does not oblige this Board to ignore evidence or North Carolina law.

Crowe asserts a bandwagon effect as another reason for approving the proposed name regardless of whether or not it has the capacity or tendency to deceive. But, the number of approving states is unclear from the record. In Crowe's September 27, 2007 letter, it claimed that "over 35" states including Virginia, had "approved" the proposed name, but that in new evidence Crowe claimed "approval" in 32 states but *not* in Virginia. In Crowe's March 17, 2008, request to the Kansas Board of Accountancy, it claimed that "over 30 other states" had approved the proposed name, but made no mention of North Carolina's position. Later, in a May 2008 request to the Kansas Board, Crowe claimed that "as of May 1, 2008, thirty-seven states approved the proposed name change...." A review of the various emails and other correspondence of record from different states indicates that in the light most favorable to Crowe, it is unclear as to how many states have actually, consciously or formally "approved" the proposed name, that basic facts (such as the ownership of the firm) have changed, and that the applicable statutes and rules have been different among the states. It is noteworthy that Kansas, which formally ruled against Crowe's request several months ago, is, like North Carolina, one of a few so-called "title" states (where only the CPA title and not the practice of public accountancy is restricted). Additionally, unlike most states, North Carolina's rules specifically define "deception" (consistent with other North Carolina consumer protection laws) to include the "capacity or tendency to deceive." Regardless, this Board is obliged by law to apply this state's rules to protect this state's citizens.

V. CONCLUSION:

Inasmuch as there is substantial evidence that Crowe's proposed use of a network brand in its partnership name would have the capacity or tendency to deceive as prohibited by the Board's rules, it is also incongruous that the Board might approve such a usage in light of the fact that Rule 21 NCAC 08N.0307 also prohibits the use of a non-licensee owner in a firm name. The fact that the non-licensee (Horwath) is also *not* an owner does not cure the problem, but would compound it. See *McGladrey*, 171 N.C. App. at 617, 615 S.E.2d at 343.

For the reasons set out above, the Board rules that based upon the hearing and other information in the record, the proposed name would not be permitted under the applicable statutes and rules.

DATE OF BOARD APPROVAL:

September 22, 2008

Reclassifications

Reinstatements - 11/17/08

Gretchen Stocks Britt, #21561
James Wesley Doggett, Jr., #14083
Lee Alan Dworsky, #24523
Cynthia Burgess Fischer, #24886
E. Johnston LeDuke, #21733
Myles Andrew MacDonald, #19157
Thomas Jay Stowe, #19690
Scott Michael Wells, #28473

Reissuance - 11/17/08

John Henry Davis, #12013
Melissa M. Dean, #28525
Robert Grover Drumwright, Jr., #11712
Millard Filmore Hodnett, #21973
Jurgen Jost, #22729
Clint James Pete, #24495
Melanie Tomlinson Townsell, #28966
Catherine Bispo Allen, #19382
Lisha Anne Davis, #31411
Mongy Mahmoud Ibrahim, #15084

Retired - 11/17/08

"Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct or indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA [21 NCAC 08A .0301(b)(33)].

Eric R. Indermaur, #11805
Greensboro, NC
Kay Lee Walker #21053
Durham, NC

2009 Board Calendar

(dates and locations subject to change)

January 1	-	Office Closed - New Year's Day
January 19	-	Office Closed - Dr. Martin Luther King, Jr., Day
January 20	-	Board Meeting - Raleigh
January 31	-	Final Deadline for Firm Renewal & Peer Review Compliance Info
February 16	-	Board Meeting - Raleigh
March	-	Online Certificate Renewal Available
March 25	-	Board Meeting - Raleigh
April 10	-	Office Closed - Good Friday
April 21	-	Board Meeting - Raleigh
May 18	-	Board Meeting - Raleigh
May 25	-	Office Closed - Memorial Day
June 24	-	Board Meeting - Greensboro
June 30	-	Certificate Renewal Deadline
July 3	-	Office Closed - Independence Day
July 20	-	Board Meeting - Raleigh
August 19	-	Board Meeting - Raleigh
September 7	-	Office Closed - Labor Day
September 21	-	Board Meeting - Raleigh
October 19	-	Board Meeting - Raleigh
November	-	Online Firm Renewal/Peer Review Compliance Available
November 11	-	Office Closed - Veterans' Day
November 18	-	Board Meeting - Raleigh
November 26-27	-	Office Closed - Thanksgiving
December 17	-	Board Meeting - Raleigh
December 24-25	-	Office Closed - Christmas
December 31	-	Firm Renewal/Peer Review Compliance Info Due



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Pursuant to 21 NCAC 08J .0107, all certificate holders and CPA firms must notify the Board in writing within 30 days of any change in address or business location.