



Attorney Warns CPAs of Lawsuits in 2010

By WebCPA Staff

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A prominent securities attorney told a group of CPAs that they will face a rising tide of enforcement actions and litigation next year.

Richard A. Roth of the New York-based Roth Law Firm delivered the warning during a speech at the New York State Society of CPAs' recent Investment Companies Conference. He believes the large business losses and frauds of 2009 will leave audit firms vulnerable to investors eager to pin the blame on accountants. Roth advised CPAs to review their client relationship practices and make sure they reflect recent court decisions.

"Investors will go after whoever still has money that could satisfy a legal judgment," he said. "This creates tremendous risk for accountants."

Roth noted that audit firms could be susceptible to additional SEC enforcement: "Because of situations like the Madoff debacle, regulators — and particularly the SEC — are under pressure to widen the net of businesses and entities under regulation."

Court decisions also shifted the rules for audit firms' best practices, clarifying the laws in some cases against CPAs, and in other cases in their favor. He advised accountants to follow the motto of "Be F.I.T." in 2010:

F - Fee Agreement: Audit firms' engagement letters should clearly limit the representation to specific services or a limited time frame, at most annually, he said. While it may be convenient for a firm to have ongoing engagements, clients have a statutorily limited time to sue directly, if you have not engaged in "continuous

representation," which courts have recently construed against the CPA firm when engagement letters are ambiguous.

I - Independence: Auditors can't have a financial interest in the subject company, **Roth** reminded the CPAs. "While this has always been a basic tenet, courts, regulators and particularly plaintiffs' lawyers are digging deeper to find any accountant/client interrelationship to pin that tail," he said.

T - Thoroughness: "Meticulously analyze each and every transaction," **Roth** said. "In this financial and political climate, you do not want to leave a jury or a regulator with any doubt as to whether you were dotting every 'i' and crossing every 'T'."

In addition, **Roth** recommended that CPAs continue putting in place programs to comply with the FTC's "Red Flags" rule and generally ensure protection of client files and data. Although enforcement of the "Red Flags" rule was delayed by Congress to June 1, 2010, the American Institute of CPAs is still recommending on its Web site that CPAs be prepared for its eventual implementation. "If you lose your client's data or it is misappropriated due to your negligence, you are going to have a problem regardless of the 'Red Flag' rule," **Roth** said.

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