MINUTES OF COMMISSION MEETING

October 21, 2010

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey were Commissioner Albert Burstein, Commissioner Andrew O. Bunn, and Commissioner Edward Kologi. Professor Ahmed I. Bulbulia of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs, and Professor Bernard Bell of Rutgers University School of Law attended on behalf of Commissioner John J. Farmer, Jr.

Also in attendance were Mary Beaumont of the New Jersey Department of Banking and Insurance; Thomas Hunt of the New Jersey Department of Banking and Insurance; Wesley Young representing The Association of Settlement Companies; Traci DeSarno of Public Stategies Impact, representing The Association of Settlement Companies; David McMillin, Esq., of Legal Services of New Jersey; Russell Graves of Consumer Credit and Budget Counseling; Michael Croxson of CareOne Services, Inc.; Doug Miskew of CareOne Services, Inc.; Alan Franklin of American Credit Alliance, Inc.; Nicholas J. Kikis, of the New Jersey Apartment Association; and Donald M. Legow of Legow Management Company, LLC.

Minutes

The minutes of the September 16, 2010 meeting were approved unanimously.

Landlord Tenant

John Cannel said that he had spoken with the tenant representatives who expressed concerns with the project and had again asked the Commission to abandon it. Marna Brown said that Staff wished to confirm that several sections of the draft tentative report that the Commission had not reviewed previously were acceptable. These sections were the definitions and general applications in article 1, which had been ironed-out in working sessions, the new grounds for eviction for seasonal tenants which were created after review of the legislative history of the Anti-Eviction Act, and a few short chapters at the very end of the report. With regard to the seasonal tenants, Staff believed that since the Act was created to protect residents in their normal housing during a housing shortage, separate grounds should be applied to seasonal tenants. The additional chapters not reviewed dealt with receiverships and court-appointed administration of substandard rental housing and rent protection and were not substantively changed; they were updated and made more concise and gender-neutral. Ms. Brown said that she was waiting for comments from the Department of Community Affairs, some of which she had already received. Staff asked the Commission to release the tentative report, with the aforementioned changes, for a 120-day comment period.

Commissioner Bunn asked about the source of disagreement for the definitions, to which Ms. Brown replied that a couple of definitions were of concern to Judge Fast but that Staff had removed the most contentious, including the definition of “residential rental premises”, which was difficult to define but, in any event, self-evident. Mr. Kikis expressed support for release of the report at this time and thanked the Commission for its work. The report was released upon the motion of Commissioner Bunn, seconded by Commissioner Kologi.

New Jersey Debt-Management Services Act

Laura Tharney stated that there were a number of people who wished to speak and that three others who could not attend had provided comments. The Compliance Manager from Novadebt/Garden State Consumer Credit Counseling, Inc., wrote to express general support for the modifications to the draft, and to propose a specific suggestion for an additional change to the fee provision, which will be reviewed by Staff. Carol Johnson from AOC’s Committee on the Unauthorized Practice of Law expressed concern that any attempt to require additional licensure for attorneys could be viewed as an impermissible interference with an area controlled by the New Jersey Supreme Court. Ms. Tharney said that she would revise the language and ask Ms. Johnson and others for input to address this issue while retaining the provisions needed to deal with unscrupulous attorneys. Ms. Tharney also said that informal comments she had received from the Attorney General’s office recommended modifications to the attorney exemption and the deletion of language stating that the law does not apply if the provider has no reason to know the individual resides in New Jersey. The Attorney General’s office also proposed a modification to Section 21, dealing with advertising and marketing, so that a provider of debt management services cannot imply that it has a governmental affiliation if it does not. Ms. Tharney also indicated that she had called Gail Hildebrandt, of the Consumers Union, who was involved in the recent FTC Rule change.

Richard Angelo explained that in the states in which UDMSA was enacted or proposed, all of the states, except New York, included language pertaining to the form and contents of their agreements that is substantially similar to the uniform act. New York differs slightly because it provides that the consumer cannot enter into a debt agreement unless the provider states that the terms of the plan, including the savings goal, can be met. Commissioner Bunn asked whether the provider has to certify that it examined a consumer’s financial ability and the consumer can comply with the plan. Mr. Angelo confirmed that in New York, that was the case. New York also added mandatory disclosures that are very similar to those incorporated by Staff in the current draft, although different from the uniform act. With regard to prohibited acts and practices, the states examined did not contain provisions more protective of consumers except in Delaware, which prohibits a provider from advising, encouraging or suggesting that an individual not make payment to creditors. Since the debt-settlement model works by holding back payments to accumulate funds, it is not clear that this is a desirable provision to include in the New Jersey draft. Utah requires a provider to include the settlement fee structure in its advertising. Neither New Jersey, nor the uniform law, do so. The language of the draft pertaining to advertising and marketing is based on the Illinois act, which endeavors to be very protective of consumers.

Ms. Tharney stated that Staff generally tried to incorporate in the draft language that, where appropriate, is more protective than the uniform act. Additional layers of protection in other state laws may be incorporated into a subsequent draft.

Mary Beaumont, the Director of Legislation and Regulation for the Department of Banking and Insurance (DOBI), appeared along with Tom Hunt, Director of Consumer Finance for DOBI. Ms. Beaumont explained that DOBI appreciated the work the Commission was doing to mold UDMSA to the New Jersey structure and they would be available to provide answers and expertise in this area. She said that the Debt Adjusters Act, which was more than 30 years old, could be expanded to address things like "for profit" debt settlement and other types of debt management issues. Ms. Beaumont said that the draft could greatly enhance consumer protection in New Jersey.

Tom Hunt explained that, with regard to "for profits", for more than 30 years New Jersey Debt Adjuster Act has taken a position of protecting the public from potentially rapacious debt adjusters by limiting the pool to nonprofits. In the past two or three years, with the foreclosure and financial crisis, there has been a recognition that another aspect of consumer protection is provided to people in financial trouble by nonprofits and "for profits", pursuant to a comprehensive statutory and regulatory scheme. He supports a system of controls that are meaningful and enforceable.

Commissioner Burstein sought clarification from Mr. Hunt that there is a gap with regard to some New Jersey consumers who are indebted and could benefit from a settlement of those debts in a manner not currently permitted by law. Mr. Hunt explained that, in recent years, the demand has grown exponentially but the pool of services has remained static because of the regulatory regime limiting the pool to nonprofits. Commissioner Burstein asked whether there was a study quantifying the problem. Mr. Hunt said that there had been a number of studies and that he would provide them to Ms. Tharney.

Commissioner Bunn asked whether DOBI handles consumer complaints. Mr. Hunt replied that they did so with regard to a number of financial problems, including mortgage and credit card issues. Matters pertaining to credit cards were also referred Office of the Controller and the FTC. He will send information to Ms. Tharney. DOBI has joined as co-plaintiff with the Attorney General and the Division of Consumer Affairs in lawsuits against firms claiming to provide mortgage modification services.

Commissioner Bunn asked whether DOBI had seen an increase in complaints for the debt adjustment services. Mr. Hunt said that they had, noting that with the growth of the industry and the need for the services has come a growth of complaints. Commissioner Bunn asked whether the Department looked at the qualitative difference between the types of services provided by non-profit and for-profit entities. Mr. Hunt said that he was not in a position to address this since it is a federal requirement.

Michael Croxson, of CareOne Services, Inc., in Columbia, Maryland, explained that his company operated in 42 states, and is licensed in most of those states, although some states require registration and not licensure. He said that an important aspect of this issue is that the consumer who has unsecured debt falls onto a continuum consisting of four services ranging from a consumer who just needs help with a budget and credit counseling to those for whom bankruptcy is the most appropriate solution. CareOne offers credit counseling, debt management and, in some states, debt settlement.

Mr. Croxson explained that debt management plans are the traditional territory of nonprofit credit counselors. Such plans involve payment, by the debtor, of 100% of the principal amount of the debt over a period of 60 months, with concessions by the creditors like reduction of certain fees or charges. The upfront fee would be set at about $35 to $50, plus a monthly fee to cover the ongoing support to the consumer during the period of the plan. Commissioner Burstein asked if this was the only method by which the provider realizes fees. Mr. Croxson said that it was the only way in which fees were paid for a debt management plan. He explained that many states, like the uniform act, limit the types of ancillary services that may be provided to a consumer. In the uniform act, it is up to an administrator whether you can provide additional services for additional fees. Debt settlement is different from debt management because it involves the repayment of less than the full principal balance owed and may be appropriate in cases in which the consumer cannot afford a debt management plan, but may be too solvent to pass the means test to qualify for bankruptcy. Traditionally, “for profits” entities provide this service and, historically, they charged substantial up-front fees. Bankruptcy is the end of the continuum, but an attorney is needed to provide this service.

Mr. Croxson explained that though his company operates in 42 states, they offer settlement services only in nine states. The states in which they offer debt settlement services are those that that have passed the uniform act in which the rules are very clear, or in states like North Carolina which have absolutely prohibited upfront fees and where no fee can be charged until services are rendered. CareOne was a strong advocate for the FTC Rule. CareOne has had 1.5 million consumers contact them for counseling and has facilitated the payment of more than $165 million between consumers and their creditors. They talk to 650,000 new consumers every month. CareOne has had fewer than 30 Better Business Bureau complaints in a twelve month period and has an A-plus rating. Mr. Croxson suggested that there is really no qualitative difference between the services provided by the licensed service providers located in New Jersey and those same services provided by companies located elsewhere, whether they be not-for-profit or for-profit. The only difference is that, as a for-profit entity, his company pays taxes. A reason to allow for-profit entities to offer services in New Jersey is that when a consumer presents to an entity, he or she can be anywhere along the continuum he explained at the beginning of his presentation. Offering only one product is not a solution. Depending on the state, CareOne offers either two or three options and, if the consumer would benefit most from bankruptcy, they will refer the person to an attorney.

Mr. Croxson stated that consumers should be allowed to choose the services they receive. Mr. Croxson said that he had great regard for Catholic Charities, for example, but that they are not an entity that offers services via Twitter, Facebook and other social media. CareOne does so and has done so for years in recognition of the fact that people need to be served in different ways and that figuring out how people are going to be best served is the right approach.

Commissioner Bell asked how debt settlement services work and how companies persuade creditors to reduce principal amount of loans. Mr. Croxson replied that typically, the consumer is delinquent on outstanding debt and the creditor has charged the debt off. The creditor is either going to write it off or give it to an internal debt collector or to a collection agency. The key is negotiating with creditors and having the necessary knowledge to do so, either by systematizing it or basing it on relationships with creditors. The provider tells the creditors that the consumer can only afford to pay “x”, either in lump sum or installments, that “y” is what the company has in escrow and that the debtor is willing to settle at, say, 50 cents on the dollar, take it or leave it, and if you don’t want it, I am going to the next debtor. The provider will then receive a fee based on the savings to the consumer. If the provider saves the consumer $5,000 on a $10,000 debt, it will get 30% of that $5,000. There is no reason to engage in debt settlement unless the consumer will see a net benefit. Mr. Croxson said that he believes the proposed New Jersey bill makes sure the consumer knows up front what the fees will be. If the settlement was for $5,000, then the fee would be roughly 30% of the $5,000 saved or 20% of the flat fee price based on the principal, whichever is less. Mr. Croxson recommended that the law require that the provider state upfront the maximum amount that the services will cost the consumer.

Commissioner Bunn asked if, in the other states where CareOne does work, but not debt-settlement work, CareOne is doing the same things that non-profits do. Mr. Croxson said yes, adding that separate laws, like those found in Illinois do not properly serve the consumer because when both aspects of debt management are together in one law, it is clearer. Doug Miskew, also from CareOne, explained that since the consumer does not necessarily know which type of product they need, having a licensing or regulatory process that covers both is ideal.

Mr. Cannel asked whether it is debt settlement if you get creditors to waive fees and interest and whether the same type of negotiations are involved in debt settlement and debt management. Mr. Croxson replied that the key is whether the consumer can afford the amortization of the debt in the plan. With debt management, creditors have standard reductions for consumers on a plan. It is not a negotiation; the deal is the same for each consumer. For example, 9.9% is one credit issuer's standard offer; 11.3% is another entity's standard. There is no negotiation in debt management plans and that is why debt settlement requires higher fees, because it takes more work to settle – it costs approximately four times more to engage in debt settlement than in debt management.

Wesley Young, representing The Association of Settlement Companies (TASC), explained that TASC is an association of about 150 members that was started in 2005, coinciding with the enactment of the Bankruptcy Reform Act. As Mr. Croxson explained because of the Bankruptcy Reform Act, many consumers could no longer qualify for bankruptcy as they might have before. Mr. Young said that the gap in the middle of the continuum is the consumer who does not qualify for bankruptcy but cannot afford debt management. He explained that TASC imposes mandatory standards for its members and has a third-party accreditation. They also "secret shop" their members by calling them and posing as consumers in need of assistance in order to make sure members are following TASC's standards. TASC has experience with the uniform act, and supports it. TASC's members offer the product for the middle-range consumer, the product between debt management and bankruptcy which is not being addressed by nonprofits. The IRS and federal law tie non-profit status to non-profit activities which, in the debt-relief world, means the educational component. If the primary purpose of a non-profit provider is debt management, the organization will lose its tax-exempt status. Since non-profits cannot overdo debt management activities, there is a gap between what they can do and what a consumer needs. Last year TASC members settled approximately $1 billion worth of debt. In 2009, banks wrote off $90 billion in credit card debts. TASC arose in an effort to help more people pay back their debts. Based on the responses to its FOIA requests to the FTC, TASC reviewed materials and determined that debt settlement companies comprise approximately 20% of companies on the list of the 100 most complained about companies in the area of debt settlement/debt negotiation, but only 5% of the complaints. The first debt settlement company with a complaint against it is number 24 on the list. In Maryland, between 2007 and 2009, there were 320 complaints. 85 of those were misclassified and did not involve debt settlement companies at all. 164 complaints were against one single provider (a law firm in which the lawyer was later disbarred). The remaining 71 complaints were against TASC members.

Alan Franklin, the president of American Credit Alliance, Inc., a non-profit, 501(c)(3) that has been in operation since 1992, said that there are about 500 companies that provide nonprofit service. Mr. Franklin's company operates in-state by either face-to-face or telephonic counseling. Mr. Franklin stated that in order to do debt adjustment, you need an altruistic component. Approximately five years ago, when the bankruptcy law changed, creditors realized that, under rules in force at that time, a debt had to be on the books for 180 days before it could be written off. He said that when the debt settlement industry started, it was like the “wild west”. Consumers stopped calling non-profit debt management companies and started going to the debt settlers. Then, with the onslaught of complaints, the FTC started to look at the debt-settlement industry. A problem is that people who go to debt-settlement companies do not get what they think they are getting. Mr. Franklin suggested that the FTC got it right by outlawing large upfront fees.

Mr. Franklin objected to the argument that “for profits” (debt-settlement) have to do a lot more work than nonprofits (debt-management). As he explained it, in the typical debt settlement plan, there are six or seven credit cards for which debt is owed, one may be charged off, and the purchaser of the account is contacted and a plan is set up. When the settlement balance reaches 50% of the debt, the amount gets paid to the creditor. It is very rare that a debt settlement plan can be set up for all six creditors because if the debt is still an asset on the books, it cannot be written off. In a typical settlement, a person goes in to negotiate. The debtor sets up a bank account to have the money to disburse to the creditor and, once one is paid, moves on to other creditors.

Mr. Franklin stated that the fees for debt management and debt settlement have to be on parity. A debt management company cannot set up a debt plan for $50. The debt management company cannot compete with a debt settlement company that charges $500 up-front fees. The non-profit industry is static and it does not advertise. Instead, its licensees are becoming HUD-certified housing counselors so they can advise consumers to avoid foreclosure. To do so, they do not get paid beyond the grant they receive from HUD, and they are not allowed to charge a fee for providing these services. They may spend four to five hours with a person who comes in, prepare documents, and then propose to the creditor that the person may qualify for a loan modification or help assist with the mediation program in that state.

Ultimately, Mr. Franklin would like to see a product based on the Obama foreclosure formula of 31% of income as a basis for a loan modification. If New Jersey wrote sensible legislation, it could be the model for the United States. He suggested that the next step in a holistic approach is to extend the program to the other side of the debt problem, credit cards. The goal should be to help people on both sides (secured and unsecured) of debt by creating a formula to cover other debts that may impact the mortgage payment. Debtors could come out of such a program with their credit restored and the creditors would get paid.

Russell Graves of Consumer Credit and Budget Counseling, a non-profit counseling entity, supports the draft act because, he explained, regulation is needed in New Jersey now more than ever. He said that he sees debt settlement ads in the phone book even though for-profit entities are not permitted by law to operate here. He pointed out that TASC only covers 20% of the industry and that a law is needed to protect consumers from the other 80% of the industry. He explained that five years ago non-profits were adequate to get the job done, but now, the problems are bigger. He said that he supports a level playing field so long as New Jersey citizens are being helped.

Commissioner Bunn asked both Alan Franklin and Wesley Young whether they supported the Commission's draft New Jersey act. Mr. Young said that he did, adding that he has been in contact with Ms. Tharney about certain sections. Mr. Young still has concerns about exemptions for lawyers acting as providers and he will continue to communicate with Ms. Tharney regarding his comments. TASC supports the uniform act and the new FTC rule. He acknowledged the problems with un-licensed providers. Mr. Franklin also supports the draft except for distinctions made between the kinds of debt that is managed because he thinks they are the same. He also wants to see parity on upfront fees. He added that 501(c)(3) requires that nonprofits get no more than 50% of their funding from debt management plan services.

Commissioner Burstein asked whether creditors are principally banking institutions or other entities. Mr. Franklin said the majority of people he deals with are indebted to larger creditors, the majority of which are credit card companies. The other creditors are the second mortgage industry. Commissioner Burstein asked whether creditors were receptive to working out a plan. Mr. Franklin replied that if the accounts are not yet charged off, the creditors are constrained by rules and cannot really work out a deal. In the case of debt settlement, the new debt buyer has paid a huge discount for the debt, and Mr. Franklin asked why this discount should not be offered to the debtor.

Commissioner Bell asked how much debt is the result of medical expenses. Mr. Croxson replied that the percentage is substantial, perhaps 25 to 40%. Mr. Graves agreed. Mr. Franklin said that medical debt is generally owned by a hospital or medical group that retains the paper in-house. It is carried for 90 days and then written off as bad debt. The debt is then sold to a collection agency. Mr. Franklin's organization tries to put the debtor in a repayment plan for the full balance. Mr. Young said that TASC companies deal with creditors across the board including collection agents, debt buyers, credit card companies, and hospitals. He suggested that a point that has been missing from this discussion so far is that non-profits receive a "fair share" payment from creditors. For every payment received by the creditor, the provider gets a cut. The fair share payment used to be higher, but is now estimated at 8% although both Mr. Franklin and Mr. Croxson said that it is now more like 4%. Mr. Croxson said that CareOne does not take the fair share payment but instead has an exclusive arrangement with the consumer. He said that nonprofits have to acknowledge that they are a dual agent. With a debt management plan, there is no negotiating since it is a cookie cutter transaction, so there is not really a conflict of interest. With debt settlement, on the other hand, Mr. Croxson suggested that a company cannot try to get the best deal for the consumer if it is also being paid by the creditor. Mr. Croxson said that this represents something of a conflict of interest and suggested that language be put in place to avoid fees being paid by creditors and consumers simultaneously.

Commissioner Bell asked Mr. Young what the findings were for the audits conducted on TASC members. Mr. Young responded that the data is not very significant because this has only been a three-year program so far. He did say, though, that TASC has terminated eight or nine members. He also noted that TASC prohibits false claims of affiliation with government programs. Commissioner Bunn asked whether the standards were available for review and Mr. Young said they were available on TASC's website and that he would give that information to Ms. Tharney.

David McMillin said that he did not feel that a fair and balanced picture had been provided because the availability of credit counseling in New Jersey has increased and he did not see a significant gap between what debt settlement companies provide and what bankruptcy provides and bankruptcy is less expensive for the consumer. He said that he has yet to see a consumer who has had a good experience with a debt settlement company and, nationally, a huge number of regulatory agencies were finding problems with the debt settlement industry. Mr. Hunt stated that there are not many debt settlement companies with a presence in New Jersey other than online services. He explained that if there was a brick-and-mortar entity in the State, the Department of Banking would have more authority to control it. Mr. McMillin said that although "for profits" were not supposed to be operating here, they operate on a nationwide basis, and if someone contacts them by phone or internet, the companies will not necessarily inform the consumer that they are not authorized to operate under New Jersey law. Mr. McMillin said that with the new FTC ruling, consumers were better protected but he added that consumers can get the same deal from creditors as a debt settlement company can. He reiterated that there was good reason to move slowly in this area and not remove current New Jersey protections from the law because the FTC ruling needed time to percolate.

Commissioner Bunn asked whether DOBI has authority to regulate this and Mr. Hunt replied that the Department's jurisdiction has certain restrictions. It can take action against the brick-and-mortar operation, but the online transactional services with New Jersey consumers poses the same issues as telephone services. This was a very grey area of enforcement.

Ms. Tharney explained that since entities not authorized to operate here do not have bonds or insurance in place, even if the Department can pursue them, victory may be on paper only, because a judgment might be nearly impossible to collect. She explained that Staff was layering protections in the draft; looking at the consumer protection available in the existing law and adding on to those protections based on what other states were doing. Unlike the Debt Adjuster Act, under the uniform act, there is specific provision for private rights of action and the act also preserves the ability to proceed under the Consumer Fraud Act. She indicated that Staff would continue with the drafting and would be in touch with the various commenters, who have been very cooperative and helpful.

Title 39 *State v. Moran*

Ms. Tharney explained that Staff had initially stuck closely to the Court's language in drafting the new provisions but, at the Commission's request, had deviated from the language of the opinion in order to craft language that was more concise and, hopefully, more clear.

Commissioner Kologi said that he had some criticism of the Court's differentiation of "willful recklessness" and "recklessness" because all recklessness is, by definition, not negligent. Ms. Tharney noted that the definition of willful had been removed from the draft so as not to make a difficult situation worse. The Commission discussed whether the considerations should include the individual's willingness to consent to a revocation or suspension but made no determination on that issue.

The Commission also questioned the language regarding the consideration of prior decisions and the requirement that subsequent decisions be consistent. Commissioners Bunn and Kologi agreed that subsection d. should be eliminated. Commissioner Bell said that this might cause inconsistencies in application of the factors included in the draft statute, and Commissioner Bunn suggested that the consideration of other administrative decisions be included as a factor that may be considered, rather than a mandatory consideration. Staff will revise the draft for the next meeting.

Effect of Abstentions

Mr. Cannel said that in order to compile the statute properly, the same provision may need to appear in three separate locations. Commissioner Burstein stated that this should not keep the Commission from proceeding. Mr. Cannel said he will draft it for Titles 44A, 18A and 52, although the Commission cannot control where it's compiled.

Commissioner Bunn said that something was confusing about subsection (e) and that it was unclear to him what was meant by the requirement of a majority. Mr. Cannel said that the cases clearly indicated that if 50% of a body is needed to approve an action, then abstentions do not count as possible votes. If there are five people on a body, three votes are required to pass. An abstention is effectively a "no", or doesn't count as "yes". If a majority is needed, the same result occurs. However, if no statute says how many votes needed, and a majority is default, then abstention counts as “yes”.

Commissioner Kologi said this is a very difficult issue. When someone votes to abstain, it is intended to be a zero. Commissioner Kologi said that this is a major problem that needs to be addressed. Mr. Cannel said that this could be simplified by saying that an abstention is not a vote – either “yes” or “no”. But it may be counted to make a quorum, unless the person cannot vote because of a conflict. Commissioner Kologi stated that subsections (d) and (e) were not needed as they are quorum-related issues and should be eliminated. He did not understand what was meant by a “majority of votes cast”. Commissioner Kologi stated that subsection (a) was needed but (a) and (b) were collateral issues. Subsection (c) was central.

Mr. Cannel said that there is still a problem if the abstainer is not sure if he or she has a conflict of interest but still decides not to vote. Whether a person has a conflict is a subtle issue. Commissioner Kologi said that if a person says he or she has a conflict, there is a conflict. Commissioners Bunn and Bell agreed that you cannot second guess a person’s reasoning for recusing himself or herself. Commissioner Kologi also stated that the terms “member shall be present” should say “shall be deemed present”. Mr. Cannel will provide a total rewrite for the November meeting. Commissioner Kologi said that if there are ten items on the agenda and the person has a conflict with only one of those ten items, there should be a quorum for all other issues.

Miscellaneous

Ms. Brown advised that the New Jersey Trade Secrets Act was released by committee and was scheduled for a vote before the full Assembly on October 25th.

The next Commission meeting is scheduled for November 18, 2010.