

Statement of James A. Snyder

Thank you for the opportunity to provide a brief overview of our BKD Forensic Audit Report.

My name is Jim Snyder and I am the Managing Partner of BKD's Forensic Accounting Practice group.

BKD is a Top 10 CPA firm with offices in about 30 cities across the nation. We have a large presence in Kansas including a significant Wichita office and many Kansas based clients served out of both our Wichita and Kansas City offices. Our lead forensic investigator in this investigation Shauna Woody-Coussens is long time Kansas resident.

We have performed investigations like the one presented today across the nation. In fact, our lead investigator Ms. Woody-Coussens is presenting to a Board meeting today on another investigation. We have performed work on behalf of the FBI, various offices of the US Attorney, the US Department of Justice and many state and local governmental agencies.

What I'd like to cover today are 3 basic areas: the breadth and scope of our Forensic Audit; the review and oversight process for our findings and conclusions; and a summary of the primary areas of report findings.

I did advise Senator Wagle that Ms. Woody-Coussens (our lead investigator) was not available today and I am appearing today as an accommodation to the Committee's desire to have a basic presentation of findings today; I will certainly do my best to answer any questions you may have. However, Shauna Woody-Coussens is the person with the best in depth knowledge of details underlying our report and I anticipate that I may well need to defer to her in some instances. Obviously, we would be happy to provide supplemental information and responses to any questions you would like us to address.

Scope and Breadth of Investigation

Let me begin by making a few comments about the scope of our Forensic Audit. Our work commenced on April 11. In total we had about 16 professionals assigned to the project including 3 computer forensics specialists, one of whom is a 20 year veteran of the Kansas City Missouri Police Department. Most of the professionals had multiple professional credentials including in many instances the Certified Fraud Examiner credential. We spent in excess of 2800 hours on the project and our professionals fees have totaled somewhere in excess of \$750,000.00.

Review and Oversight

During the early stages of the Forensic Audit the KBA and representatives of Gov. Brownback's Office reached an agreement that various representatives of Gov. Brownback's Administration would be involved in an oversight capacity in the Forensic Audit process. This was to include discussion about scope of procedures, review of various drafts of the report, discussions and meetings regarding the report as it developed and identification of information that would be helpful to the overall process. This team consisted of Sec. Rodman, Mr. Stegall, Mr. Anderson on behalf of the Brownback Administration and David Watkins, David Vranicar and later in the process Tariq Abdullah on behalf of the KBA.

Senate Commerce Committee

Date: January 25, 2012

Attachment 1

As noted in the report, we found this to be a useful process and we maintained frequent communication with members of the Administration's team as the Forensic Audit progressed.

During the final stages of the Forensic Audit process, as one of the later drafts of the Forensic Audit report was circulated to the team for review and comment, BKD confirmed the understanding regarding the review process in a letter dated Dec. 9, 2011.

In BKD's letter to the review committee dated December 9, we set out our understanding of the agreed upon process for final corrections, clarifications and process with respect of the issuance of our final report.

Our letter to the Review Committee stated as follows:

“ In follow-up to the meeting held December 7, 2011, below is the agreed upon schedule of events.

- December 14, 2011 – Clarifications (asserted errors, typos, etc.) due to BKD
- December 21, 2011 – KBA responses due to BKD
- January 5, 2012 – Release of final KBA report

I believe it was agreed that there would be an exchange with each other of the materials to be sent to us on December 14 and December 21. If there are asserted errors identified in the draft report by either party, we will obtain an understanding of the nature of the asserted error and reach our own conclusion as to the correct resolution of the matter in our Final Report.”

This process was consistent with prior discussions and practices of the group and was important to the overall process and the integrity of our report and any decision that we made about the release of the Final Report. Obviously, we did not want to face a situation where the members of the review team had undisclosed issues or problems with the report, including alleged errors in the findings and conclusions.

In our letter of Dec. 9, we made it clear that if errors were asserted in that Draft of the report, we would obtain an understanding of the nature of the asserted error and reach our own conclusion as to the correct resolution of the matter.

Secretary Rodman's e-mail the following day confirmed this understanding.

As far as we knew, as of the middle part of December, alleged errors in the draft would be revealed to us; it was then our job to investigate and ultimately resolve the issue. We were aware of no asserted errors in report.

That changed on Sunday January 22, 2012, the day before the scheduled release of the Final Report. Shortly after noon on that Sunday, Mr. Rodman sent 2 e-mails in which he reported what he believed to be an error relating to a finding in the report pertaining to Angela Kreps. Because the report release was scheduled for the very next day, this is something that got our immediate attention. We responded to Sec. Rodman via e-mail within an hour to begin looking at the issue he raised. Copies of the relevant e-mails are available.

Regarding Mr. Rodman's questions, I looked at the matter and offered to discuss the matter further with Mr. Rodman by phone. We did discuss the matter by phone that afternoon. During the conversation Mr. Rodman

provided information that was new to me about discussions he personally had with Ms. Kreps relating to recusal issues.

Based on my further look at this issue raised by Mr. Rodman and the information conveyed to me during our conversation, I evaluated whether the report language: "is a technical violation..." should be changed to "may be a technical violation."

Sec. Rodman had not copied the KBA representatives on the emails raising this issue. Therefore, in accordance with the "sharing of requested revisions" agreements the parties had reached in December, I notified the KBA of the alleged error raised in Sec. Rodman's e-mail and discussed the Angela Kreps issue further with both parties that afternoon.

Based on those discussions, I understood that KBA continued to maintain that there was no violation of Conflict of Interest provisions and the State Representative continued to believe that Ms. Kreps was in violation of the Conflict provisions.

After discussing the matter with our lead investigator, Shauna Woody-Coussens, we agreed that a more accurate statement on the issue was that it "may have been a technical violation" as opposed to was a technical violation, thus recognizing that there was debate on the subject between the parties. We still believe this is a more accurate statement of the issue.

The other change of the Final Draft of the Report that we incorporated over the weekend included the notation that I had been able to interview Mr. Jerry Boettcher.

Thus, as I sit here now, I believe the only error asserted by the State Review Committee in the Report is the difference between: "is a technical violation" and "may be a technical violation" on pages 144 and 146 of the Report. We have offered the parties the opportunity to provide supplementation on this point, if they wish to do so.

The review process seemed to work very well to narrow the disputed issues during the course of the Forensic Audit and seemed to accomplish a great deal of general agreement with respect to the absence of errors in our Report.

Investment Review and Approval Process

The review of KBA's investment process was one focus of BKD's procedures. We found that KBA has established a standardized investment process for potential grants or investments that are considered under a KBA program. Each program has its own unique program guidelines and application materials, but the review process undertaken by KBA is essentially the same for each program.

Applications go through a review process at various points in the process. When an application is received, an initial assessment is made which considers program guidelines and eligibility and investment criteria. The next stage of review involves scientific and financial due diligence. If it is determined that an opportunity is potentially suitable for investment, and initial Investment Recommendation is prepared for submission to KBA's Investment Committee.

During the Investment Committee meeting, the nature of each opportunity is discussed along with due diligence findings and recommendations provided by KBA staff. The committee then votes whether to recommend the investment to the BOD for approval.

Final investment approval is based on a review of the Investment Recommendation by the Executive Committee or the BOD. The Executive Committee or the BOD have the right to reject an investment opportunity, change its terms, its funding level and other financing parameters.

Once approved, most investments do not result in a lump sum payment of the awarded amount. Investments are routinely staged into a series of payments based on the accomplishment of specific milestones. Grantees must submit information supporting their achievement of each specific milestone before the payment attached to that milestone is made by KBA.

Grants and equity investments made by KBA were reviewed for adherence to the investment process, the adequacy of the investment documentation and monitoring and the payment of milestone applications. BKD's procedures in this area included the review of Investment Committee and BOD minutes and attached Investment Recommendations to ensure that all investments went through the review process. Investment documentation was reviewed in KBA's electronic storage database to determine if appropriate information was being tracked for monitoring purposes. All milestones were traced back to the grant agreements and supporting documentation for the payment of milestones was reviewed. All milestone payments were then traced back through Quickbooks, KBA's financial accounting software.

Findings

Overall, the investment process appeared to be followed. The multiple levels of due diligence, review and approval required in KBA's investment process appear to significantly reduce the risk of improper grants or equity investments. In the approval process, the various rounds of review and approval by KBA staff, the Investment Committee and the Executive Committee/BOD would make it difficult for an improper grant or investment to be "railroaded" through.

The review of Investment Committee minutes indicate that the committee is thorough in its review. It was not uncommon for a potential investment to be handed back to KBA staff for further due diligence. It was also noted that the Investment Committee did not approve all Investment Recommendations. Likewise, not all investments recommended to the BOD for approval were approved or were approved with their recommended terms. The BOD could and did reduce awards and change milestones attached to award payments. Therefore, in our opinion, based on the information available for review, the investment process appears to be sufficiently diligent to prevent the improper approval of a grant or equity investment. However, this does not imply that all grants or equity investments made by KBA have or will be successful.

We also reviewed grants and investments for potential conflicts of interest. Our review identified many associations among KBA's client companies, between client companies and KBA and between KBA and its partnering organizations. However, given the investment process utilized, no obviously inappropriate grants or

investment to client companies were identified which were in violation of KBA's Conflict of Interest Policy or the conflict of interest requirements of KEGA.

Potential Conflicts of Interest

Another focus of our procedures was on potential conflicts of interest. Potential conflicts of interest with regard to KBA's employees and BOD members, client companies, vendors and collaborating organizations were reviewed. It was noted that a large number of relationships do exist between these groups as a result of previous employment, Board affiliations and the like.

The sources of information utilized included KBA Conflict of Interest Disclosure forms maintained for all BOD members and employees, required Substantial Statement of Interest forms, and information regarding the management of client companies available from KBA investment information. In the various interviews we conducted, we also asked if the interviewee was aware of any relationships between KBA and its client companies. We used this information to create a large relationship database to allow us to review and consider possible relationships.

With regard to potential conflicts of interest involving BOD members and client companies, we noted that Director Sanford is the COB and has ownership in NanoScale. NanoScale has received funding from KBA. However, it was determined that Director Sanford was in compliance with KBA's Conflict of Interest policy and statute as Mr. Sanford's affiliation with Nanoscale was disclosed in the minutes of the meetings in which the investments were approved, and Mr. Sanford recused himself and did not participate in the discussion or vote on NanoScale investments.

We also took a look at potential conflicts of interest involving payments made to entities that BOD members or KBA employees were associated with. It was noted that KBA entered into a contract with Director Franz's employer, MRI Global. However, the minutes note that Dr. Franz disclosed his employment relationship and recused himself from the discussion and vote on the contract.

An additional potential conflict of interest was identified involving KBA sponsorships of annual BIO conventions through KansasBio and Director Kreps' employment by KansasBio. Ms. Kreps position as president of KansasBio was well known to the BOD and was disclosed on her conflict of interest forms. However, Ms. Kreps did not recuse herself from the approval of at least one vote relating to an AOP which included as a line item a sponsorship. As mentioned above, this may have represented a technical violation of KBA's Conflict of Interest policy and statute and we have so noted in our report.

Existing Relationships

We also reviewed the potential for conflicts of interest due to existing relationships between KBA employees or BOD members and persons or companies receiving payments or grants from KBA.

It was noted that Tom Thornton has existing relationships with a few individuals employed by KBA and a few vendors contracted with by KBA.

Both Cary Nourie and Dr. Terry Osborn, previously employed by KBA, had existing relationships with Mr. Thornton prior to coming to the KBA. Mr. Nourie and Mr. Thornton has worked together previously and Dr. Osborn and Mr. Thornton both served on the Board of Advanced Life Sciences. It appears that Mr. Thornton was involved in the hiring of both Mr. Nourie and Dr. Osborn.

We found no evidence of the disclosure of these prior relationships to KBA's BOD in the hiring process, but also noted that as Mr. Thornton did not have a defined direct or indirect interest in the employment contracts, it did not appear that disclosure was required.

We noted that Mr. Thornton recommended that KBA hire the law firm of K&L Gates out of Chicago, specifically Mr. Jude Sullivan, to provide legal services to KBA. Mr. Thornton and Mr. Sullivan previously worked together at divine interVentures. Mr. Thornton did disclose that relationship to the BOD in the contracting process.

We noted that Mr. Thornton recommended that KBA hire the law firm of Dickstein Shapiro, specifically Mr. Dennis Hastert, to provide assistance in the pursuit of a large opportunity. Mr. Thornton had previously worked on then Representative Hastert's staff in Washington. Mr. Thornton did disclose that relationship to the BOD in the contracting process.

Findings

We did not determine that any of these pre-existing relationships resulted in any disadvantage to KBA. However, given that the existence of pre-existing relationship can cause the perception of a conflict of interest, we recommended that consideration be given to requiring the formal disclosure of these relationships even if the relationships do not trigger a disclosure under KBA's Conflict of Interest Policy.

Kansas Bioscience Growth Fund

KBA's BOD identified the lack of access to venture capital in the state as an impediment to growth in the bioscience sector. To address this challenge, KBA created the Kansas Bioscience Growth Fund with the eventual goal of investing up to \$50 million in venture capital funds to assist in providing access to venture capital financing to client companies.

A formal process was undertaken to establish the Growth Fund. A Request for Qualification was developed which defined the requirements and guidelines for eligibility that would need to be met for potential fund managers to qualify. Twelve venture capital funds submitted applications for consideration.

KBA contracted with a third-party to conduct financial and other assessments of the venture capital fund applications. The third-party rankings of the 12 venture capital funds was used by the Investment Committee to shorten the list to 8 candidates. KBA eventually approved a total investment of \$50 million in the 8 firms.

Investments in the 8 funds were contingent upon specific terms, such as:

- the attainment of minimum funding levels;
- the requirement that KBA's commitments not total more than 20% of the total capital raised for investment;

- the commitment by the fund to open an office in Kansas; and
- the commitment by the fund to make an good faith effort to invest at least an amount equal to KBA's capital commitment into bioscience companies in Kansas.

With regard to the good faith effort to invest in Kansas companies, KBA noted that venture capitalists generally will not be geographically restricted as they need an attractive rate of return first and foremost. This was echoed by General Managers of some of the Venture Capital firms we interviewed.

Through the date, KBA has invested in three of the eight venture capital fund candidates. Due to the difficult economy in which the remaining funds have attempted to raise capital, awards to an additional three of the venture capital funds have been cancelled due to their inability to raise the required minimum funding. Two other candidates are still possibilities for future investment.

Through June 30, 2011, the three venture capital funds funded by KBA had received approximately \$6.8 million from KBA and had already participated in \$22 million in investments in Kansas Bioscience companies.

Tom Thornton

With respect to our findings relating to Tom Thornton I offer the following:

We looked into a number of allegations from a number of different people relating to his activities.

This is what we found.

Some described Mr. Thornton as a smart, charismatic, visionary guy with lots of contacts. Others described his as frequently missing in action, fast and loose with detail, vindictive and dictatorial and not an effective manager.

We found that these traits played themselves out in a variety of ways. First, we question whether the flow of information from Mr. Thornton to the KBA Board was appropriate. We saw several instances where it appeared to us that the full story had not been communicated. Second, there was frequent comment in the office about a toxic environment, particularly for women. This perception was exacerbated by the personal relationship Mr. Thornton had with a KBA employee. This resulted in allegations of favoritism, inappropriate intimate relationships in Mr. Thornton's office and questions raised about the appropriate line of reporting pertaining to Mr. Thornton.

We have communicated to the KBA Board several lessons that we believe can be taken from this situation. We also believe that the implementation of the Ethics Hot Line at KBA is a very positive step.

Thornton Computer Scrubbing

As is well known now and well documented, we did find that Mr. Thornton scrubbed his personal laptop computer. The timeline is as follows: BKD was hired on April 11 to perform the forensic audit; Thornton's laptop is requested as part of that investigation; Thornton resigns on April 13 while he is out of town; continuing requests are made for return of his laptop computer; KBA receives a request for documents from the Johnson County DA on April 20; Thornton begins erasing and scrubbing activity on April 21; ultimately returns the computer on April 26.

In our interviews with him, he admits to the scrubbing and stated that it was to remove sensitive personal information from the computer.

We have spent significant resources to attempt to determine whether there were any relevant KBA documents that would have been unique to Mr. Thornton's computer which he scrubbed. We have not found any such instances, however, we did note a scope limitation in the report with respect to this issue. We have confirmed that key business records relating to KBA investments and grants are maintained in a separate Biz-Tracker document retention system and would not have been impacted by the scrubbing of one individual computer.