

Transcript from May 9, 2018 Interested Persons Meeting
Enforcement Division Streamline Settlement Program and Enforcement Division Priorities
and Procedures
Fair Political Practices Commission
1102 Q Street, Suite 3000 Hearing Room
Sacramento, CA 95811

Fair Political Practices Commission staff held an Interested Persons meeting on May 9, 2018, to solicit public input regarding Enforcement Division Streamline Settlement Program and Enforcement Division priorities and procedures. Below is the transcript from that meeting.

Mr. Silver: Good morning everyone thank you for coming today I'm Adam silver Commission Counsel for the Fair Political Practices Commission joining me today is Galena West, Enforcement Division Chief as you know we're here to solicit public comment on two enforcement related items first the proposed review the enforcement divisions priorities and procedures and second the enforcement division streamline settlement program some instructions for those joining us by phone please do not use speaker phones or cell phones also please use the mute button if you are only listening and of course don't forget to release the mute button before commenting and for those of you on the phone and the audience please identify yourself before speaking and come up to the podium please with that out of the way we'd like to proceed with public comment on the first item the proposed review of the enforcement divisions priorities and procedures

Mr. Bell: Chuck Bell, Bell, McAndrews, and Hiltachk, here on my own but also on behalf of the California Political Attorneys Association. Stephen Kaufman is also here and so we're here really because the discussion that was initiated at the Commission meeting two meetings ago led to this IP process and so I had a bit to say at that meeting but I wanted to just say that CPAA and the members of it have been involved about 30 years some we're coming up on about 30 years of existence and really the initial focus of the organization initial reason for it to organize was to discuss with the FPPC enforcement process and procedures and we during that period of time in various ways have attempted to address that both directly with the commissioners of each Commission as they came along and then we individually promoted the McPherson the bill that led to the establishment of the McPherson Commission participated individually and also collectively and its proceeding some of our members were actually on the Commission others of us made presentations and recommendations subsequent to that and followed not only what was going on at the Commission during that time but subsequently how the legislation and the recommendations of the Commission were made and how they were reacting to responded to by the legislature of the Commission and as more recently in 2015 we prepared a letter after meeting with Chair Remke of things that we thought were important to consider and that kind of brings us to now in terms of our process I think you know what I would describe our involvement in has been cooperative with the Commission we're not just critics we have our points of view there are things that we think you've done well and but we also recognize that it's an ongoing process as you face new issues some things in terms of procedure have been handled well and I think we can talk about that a little bit more what I wanted to do was to say that you

know we're very interested in participating in this how and in whatever way it develops I know you have a couple of proposals that you made and we'll talk a little bit about that including the enhancing the streamline program which was one of the things that I think we, in connection with previous Enforcement Division personnel and Commissioners, thought was a good idea and it dealt with some of the equities particularly concerning more routine violations that they be handled not in a manner that would look have people facing the prospect of 2000 or \$5,000 per violation fines which was daunting particularly to a lot of people who just aren't you know don't hire professionals who or don't or are daunted by the prospect that when you start counting violations of 2,000 or 5,000 per it looks like time to run for the hills so you know you've we think you've done that well we think there are some opportunities to expand it I'm going to pass the baton to Steve Kaufman who can talk a little bit about what we think the process should look like to deal with this and then we can get into some of the issues that we think are detail issues I can classify them in three parts one is unfinished things on the McPherson Commission agenda, some of which are regulatory or policy, some of which are legislated which really aren't necessarily within your bailiwick but you know certainly the Commissioners and staff can look at those and evaluate whether that's worthy of legislative proposals the second is items honored 2015 letter which some of which have been addressed to our satisfaction some of which are still out there some of which are policy or regulatory in nature and the third or issues that didn't make either of those two lists some of them were relating to more recent practice and response that we think still deserve some attention on this set of things that might be considered so with that let me turn it over to Steve

Mr. Silver: it sounds like someone doesn't have their mute on so we can hear you typing if you wouldn't mind muting your phone thanks

Mr. Kaufman: good morning everyone and good morning everyone by telephone Stephen Kaufman of Kaufman Legal Group and as Chuck said also here on behalf of the California Political Attorneys Association good to see everybody this morning I want to echo what Chuck said I don't have quite the history that Chuck does but you know my involvement here goes back more than two decades and I can tell you that the thing I think has made you know the relationship a success is the way in which the Commission has historically looked to members of the CPAA to provide input when it's considering changes to the system and the fact that I think the CPAA embraces the role of the fact that we are all you know bipartisan we come to this with different political perspectives but everybody's goal is to make sure that the system works for everyone and I think we've been a good resource to the Commission in the past and I think the Commission has respected the fact that we bring an expertise to the table that may not be apparent when you're sitting on the other side of the table so I hope that we can continue to fulfill that role as we move forward and look at the enforcement process and you know I know there's been a couple of conversations where there was one large conversation at the Commission meeting about how to go about this and we wanted to put a couple of proposals on the table for what this might look like going forward and what we would urge the Commission to consider is the creation of a task force to look at these issues that would include you know not only the issues if you will that are on the agenda today but taking an expansive look at that and create a task force that could be subject to the Bagley Keene Act that could be made up of two commissioners we would recommend to representatives of CPAA one from a democratic firm one from a Republican firm to be selected by the CPAA other members of the regulated

community as appropriate and the public you know representatives evolve so that all voices can be considered and a group that can really review these issues study these issues and come up with a formal proposal that could be presented to the Commission so that the Commission could then review the taskforce proposal and we would hope have a separate special meeting called devoted entirely to reviewing this issue and review the proposals of the task force I know I speak for Chuck and I say there's been a lot of task force in the past and sometimes these task force issue they issue great reports that just died on the vine and never really get the attention that they deserve some of those recommendations ultimately get you know work their way into regulations some of them worked their way into legislative changes and then others never see the light of day even though everyone around the table thinks they're all good ideas so we would like to see a special meeting and a special focus devoted to this where the you know the Commission could then consider this proposal you know in a process that would given circumstances probably culminate sometime after November given the pending election so that would be

Ms. West: Pardon one thing on the task force having been involved with the task force that Chuck ran the what do we call the Schnur task force or that had staff involved I know she didn't say staff didn't did you intend for staff to be a part of the proposal

Mr. Kaufman: yeah I'm sorry yeah we would absolutely expect that there would be staff involved both directly in terms of being on the commission and then also staffing the Commission or the task force so yeah that that's our vision for what we'd like to see undertaken and obviously there can be plenty of discussion about how many meetings and the whys in the wherefores but that'd be our suggestion we think it would provide the recommendations with an air of credibility you know if there's buy-in from all those quarters so that's our proposal as to process I don't know if you want to break this down as Chuck said there are plenty of recommendations we have about kind of the scope and the priorities of the Enforcement Division this kind of bleeds a little bit into streamlines so I guess I would just say and I want to give I know we want to give everybody a chance who's calling and perhaps to comment on process as well so I don't know if you want to do that and then kind of get back to the other but let me just say a couple general comments about priorities as relates to streamline not streamline I agree with Chuck I think the streamline program has been a tremendous success and benefit I would like to see the streamline program expanded both in terms of perhaps the monetary thresholds but also in terms of what type of potential violations may qualify for streamlined and who may qualify for streamline and I'd also like to see I don't know if it's as much an expansion or as much of a stepping back and we're and going back to the way things have been done at various times but I'd like to see an expansion of the warning you know the warning letter and the advisory letter as a means of enforcement at a lesser level than necessarily imposing monetary penalties for certain routine or technical violations that are inevitable in any campaign be it a campaign that's a small campaign that maybe as Chuck referred to you know that might have a candidate a less sophisticated candidate that doesn't have a professional operation but even those campaigns that are large-scale campaigns that have professional operations believe it or not even those of us who are professionals make mistakes from time to time it's an inevitable outcome in an otherwise chaotic process a process that is very complicated among the many task forces that have been formed over the years have been task force that have made recommendations to simplify the process to do away with a lot of the redundant filings to blow up the whole system all together and come up with a new way of reporting all of which are designed to maximize disclosure and

lessen the complexity and eliminate the traps for both the wary and the unwary you know that inevitably happened in the context of these campaigns so we'd like to see you know a process that acknowledges this environment and allows for some flexibility and enables the Enforcement Division to focus on the things it really needs to focus on the serious violations but makes accommodations for you know these other routine type of violations which you know frankly it seems in the last couple years there have been more and more cases coming through the enforcement process to the Commission that reflect enforcement and fines for matters that for a time we're being dealt with more so in the warning letter advisory letter context or even allowing for prosecutorial discretion you know not even necessarily resulting in any enforcement so that's kind of a general overview I think of some of the issues we'd like to talk about in the you know in the context of priorities and with respect to the streamlined program but we can get into more that later and of course those kind of details are the details that can be hashed out once the task force gets created so

Mr. Silver: great quick follow-up question it looks like Chuck laid out three categories of issues that CPAA wants to address is there a hierarchy or priorities of specific issues that CPAA wants the Commission addressed just so that they could consider that in deciding next steps at the at the meeting

Mr. Kaufman: well I think what I just articulated kind of covers all of those categories in a certain sense some of which relates to the last category and those are things on the horizon that weren't necessarily an issue a few years ago but have become more of an issue now you know I think the many of the enforcement issues that were outlined that were the subject of the McPherson report and were outlined in the 2015 letter a lot of that's technical stuff that does make a difference

Mr. Silver: mm-hmm

Mr. Kaufman: some of those issues have been addressed both in regulations and in practice and we appreciate that but there are a few issues remaining I guess from from the McPherson letter in 2015 and maybe Chuck can speak to those I'm sorry not to McPherson letter but the

Mr. Silver: the CPAA

Mr. Kaufman: the letter of 2015 Chuck might be able to highlight a couple of those to you but I really think it's the overall tone of enforcement it's really you know what are the priority is going to be and how transparent is that process how predictable is that process because I think in the last few years there seems to have been a tension between you know the commissioners in terms of what they think is fair is reasonable the enforcement staff in terms of what they've brought to the Commission and how they've treated certain violations and the Franchise Tax Board which is tasked with doing audits and presenting stuff to the Commission that seems like some of the thresholds and materiality standards have been moving targets and I think everybody's trying to feel their way through the process and not necessarily understanding where it's all coming from so for me that would be the number-one priority is just really transparency understanding you know having a general understanding of what the thresholds are and where the thresholds should be as to what method of enforcement the Commission wants to impose

Mr. Silver: great

Mr. Kaufman: okay

Mr. Silver: well thank you

Mr. Kaufman: thank you I'm sure I'll be up here again

Mr. Silver: any comment from anybody on the phones

Mr. Fuhrman: yes this is Jon Fuhrman may I make a comment

Mr. Silver: of course, go ahead

Mr. Fuhrman: Hi my name is Jon Fuhrman I'm a member of the CPTA the California Political Treasurer's Association not an attorney I'm not speaking on their behalf but I do have a perspective coming from non-attorney members people who are working as treasurer's on a perhaps lower level in particular focusing not so much on candidates or campaigns but on community groups that raise know maybe five ten to fifteen thousand dollars but are still tasked with filing and obeying all the rules and who have who have been finding it more and more difficult to find members who are willing to take on the role of treasurer because of their fears about the ramifications of enforcement actions and the liability in which they find themselves in so I would very much like to suggest that as you put together a commission you include members who are not attorneys but may be members of CPTA or maybe just working-level treasurers who have had experience dealing with these smaller community level groups and bring their perspective about how difficult it becomes for them I've raised this issue before with the Commission in Pasadena area where I live there used to be a group called the San Gabriel Valley women's Democratic Club which disbanded rather than try to comply with the requirements of the their practices the portal Commission of the requirements of the filing regimen now these were a group of older women average age 70 to 80 and they just couldn't deal with it so they gave up their activity and they're in Vaman in the local political scene and I think we're coming to a point where more and more of the small community groups feel totally intimidated by the filing requirements and the potential results if they make a mistake so I'd like to bring that perspective group and I would also second Steve's comments about a better understanding of the materiality threshold and enforcement actions I think would be and perhaps a thoughtful discussion on where what that threshold should be and perhaps changes to that threshold I think would be of use to the Commission thank you

Mr. Silver: thank you just to clarify when you mention a materiality threshold is that in regards the difference between a mainline stip and a streamline one

Mr. Fuhrman: in terms of enforcement action in terms of when fines are assessed that the amount of money of fines that are assessed are there seems to me to be some significant randomness in the level of fines that are assessed for violations that significant substantial there seem to be quite a bit of random okay are there any other groups that when I look at the monthly

agendas it wasn't clear why some people are getting fined or how much are we getting fined why some fines are more substantial why some fines are less substantial there seems to be quite a bit of randomness

Mr. Silver: Okay are there any other groups that that you'd suggest including in in a task force do you think their feedback would be helpful

Mr. Fuhrman: I think you might consider inviting people from each of these state party structures who had particularly who have had experience or exposure working with local clubs as for instance on both sides of the party there are lots of local clubs democratic republican clubs around the state you know that raise very modest amounts of money and yet fall under these filing obligations I think their perspective would be helpful in your discussions

Mr. Silver: excellent well thank you Mr. Fuhrman do you have any other comment on this

Mr. Fuhrman: no further comments thank you

Mr. Silver: great thank you so anybody else on the phones you'd like to provide comment great well hearing none I think we should move on to our second item which is the enforcement division to streamline settlement program and the division chief she division chief galena West will be handling this one

Ms. West: Hi everyone thank you and I'm glad to hear a representative from the treasurer's Association I had reached out to them and I'm glad that you showed up Mr. Fuhrman I appreciate it

Mr. Fuhrman: Let me remind you that I'm here individually

Ms. West: Right

Mr. Fuhrman: Not as a representative of the organization but I can certainly relay some concerns that

Ms. West: and I may or may not have spelled your name correctly so who knows so for the streamlined program as you know since since taking on this office in 2015 one of the things that I've wanted to do is do you know where there is feedback is expand the streamline program and so the first step of that was obviously consolidating them all into one spot so that we all knew what all the different memos from over the years said and I thought that that was an important first step and now this is the second step to not only look at the things that are included in streamline but identify new items that could be handled in a streamlined process to to address one of CPAAAs comments over the years about treating unrepresented parties in a more fair and equitable way and I think the streamlined program is the best way to do that because then there's lower more traffic ticket type fines that dress a multitude of different violations so that being said when we presented this to the Commission as you saw in the agenda handout for today they Commissioner Hayward and commissioner hatch said some possibilities for change and so one of the things I would hope that you would comment on is the possibility for changing the penalty

amount that commissioner hatch had presented and so I gave an example of that on the last page to try to make it a little more you know able to to comprehend what the change would mean and then also what types of violations and thresholds should be changed or added the only one I would add that we've come up with since that meeting would be lobbying non reporter because that's actually not in their lobbying non filer is but non reporter isn't so that would be the only one that I would verbally add on the spot so I I hope that people have comment on this and what they would like to see happen with the program

Mr. Kaufman: Here I am back again Stephen Kaufman again commenting both on behalf of my firm and wearing my CPAAA hat so first of all I have to say Galena this was a great presentation of the all the different streamline penalties which I have to confess you know I haven't memorized and haven't worked through the entire matrix but it's great that it's all there and you know again I guess I kind of echo some of my previous comments you know I do think that the streamlined program needs to account not only for the smaller filer but also the larger filer when we're talking about penalties that or when we're talking about infractions that don't you know necessarily exceed certain percentages or thresholds of activity in the context of their overall activities I think the system has worked well in the context in which just in which it's been applied and I'd like to see an expansion of that comment I also think we need to think of it in terms of major donors who oftentimes only have one contribution and it might be a lot more significant than the thresholds that are laid out here but I mean it literally may be one single contribution so I think their interests need to be considered as well but as I said before I'd also like to see the you know the idea of potentially expanding the streamline program expanded to include either an expansion or you know linkage with the warning letter and the the advisory letter both are what of which are a part of the process and I'd really like to think about how you know those things play into what's trying to be accomplished under the Act how do we ensure disclosure without again penalizing people for things that are relatively minor and don't have a an impact on the election like some of the more major violations so you know again I would urge you as you look at the streamlined program to look at those other tools as well and see where the hierarchy falls on what you know what type of thresholds may apply to different matters I mean I think one thing that really needs to be considered in all this which doesn't necessarily get borne out simply by looking at dollar thresholds is mitigating factors and circumstances and how you bring those into the fold which I think you know the warning letter does significantly because it speaks to a violation but it puts it in the context in which it may have occurred so you know I would I would urge a review of you know policies that relate to the mitigating factors and categories of violations that may be eligible for both the warning letters and the streamlined program one that jumps out to me is excess contributions right now the system is essentially a strict liability system if you will you receive it you know you're done and you know I would like to see some consideration of perhaps some kind of a disgorgement policy or some kind of mitigation that allows for you know a disgorgement within in a certain amount of time to be able to cure a violation or at least take it from an enforcement penalty you know down to a warning letter or you know possibly putting things into streamlines all of those all of those different aspects I think should be considered in figuring out how do you want to approach some of the issues that constantly come up from election to election you know and certainly you know that's one that's been an issue recently you know the 24-hour reporting issue of course is subject to to the streamline program but only in very limited circumstances so you know again I'd like everything to be looked at in terms of the context of the election in which the person is running

rather than looking at things on a sheer kind of numerical basis you know another way she I wanted to bring up it's not I wouldn't call it one of the more prevalent issues that we see all the time but if we're gonna look at enforcement and I know Galena you and I have had conversations about this in the past and that's the private attorney general provisions of the Act I would say that those provisions have been put to relatively little use over the year but when they have been put to use they've also been subject to incredible abuse and I recognize that doing anything about it might necessitate legislative changes but I really think that that if we're gonna look at the enforcement process that needs to be on the table and the discussion about what can be done to curb abuses of the process the private attorney general provisions were intended as a mechanism for the public where the FPPC essentially falls down on the job and doesn't pursue something that should be pursued and instead it's been used by people who have made claims to the FPPC the FPPC has rejected a claim and the person has pursued it anyway and it's essentially been used as a method of extortion to get large settlements and get attorney's fees for people who have claims that would you know generally not be pursued by the FPPC or if they were pursued they'd be pursued in an administrative context so we like to see some thoughtful consideration to how the statutes can be revised and or how via regulation or other practice some of these abuses can be curbed it seems like I don't know once every five years or ten years we get a spate of these private attorney general actions when somebody gets a good idea up their sleeve and then the issue goes away so and having represented a couple clients who have been the subjects of that abuse over the years you know we'd really like to see something done to address that issue it's just not fair it's really not right and that shouldn't be used as a sword to you know go after things that even the FPPC has deemed to be not worthy of above enforcement seeing whether there's anything else here on my priority list I know checks got checks got some issues and he's got some kind of procedural things I think he'd liked to emphasize anyway those are those are a couple things at the top of my list and I should say that you know we're happy to provide a detailed list outlining specifics and getting into more details in specifics as the process unfolds as you desire to hear from us but I think those to me are kind of the key things and the real you know recurring issue for us that we're just continually trying to get our hands around and that we think really warrants attention is the kind of proportionality of the penalties the recognition of the realistic circumstances in which these violations occur and addressing those issues as I say from mitigation standpoint and in a context other than full enforcement of some of these more routine violations

Ms. West: thank you and then the only thing I would add is when I presented the memo in May of 2015 in it and also in this one what I tried to do was include what would be considered aggravating or mitigating so the mitigating would mean you would fall out of streamline and get a warning letter and I think as far as I know it was the first time we put all those into a public document to try and get some input and from the Commission and the Commission was happy with the way that it was and so they gave us the direction to say yeah those are the factors that would fall into a warning letter these would be the factors for streamline and then we put in the aggravation of those same counts and said okay these are the be the ones that you would fall out of straight line so I mean we should definitely open that discussion back up for the Commission I would just not want to give you the impression that it would be my call so it would definitely be their policy call that that we would have to use that as a starting point understood

Mr. Kaufman: understood but I think it's a good discussion to have and it's you know like anything in this area these rules need to be flexible they need to address the realities of the system as it exists at that time and you know I think the concepts are there right mitigation you go this way aggravation you go that way the question is what falls into that bucket what's in the mitigation bucket what's in the aggravation aggravating bucket whatever you know I think those are the things that should be looked at and yeah we you know it's our job to make a recommendation and it's their job to make a decision right so okay thank you

Mr. Bell: I came up here this morning and so I left some paper behind and that's why we're handing off paper I just wanted to say and follow up and that I think this was a really important discussion the the idea that you might expand the streamline program and some of the specifics that you've outlined there I think I think those are all useful to consider for inclusion and a expanded and streamlined program but and I think you're really aware of this and Steve commented and I wanted to say that I think having a matrix like that where you have maybe a list of things that might be aggravating along the lines of the matrix that you have set forth here or might be mitigating would be useful and where you say in mitigating if there's enough mitigation in light of these things that would otherwise qualify for streamlined it might lead to a warning letter might lead to something that didn't involve a formal fine so I think that's a really good approach to take I do think that the issues that you've raised in parts four and five they're quite useful both in terms of the types of violations that could be included and also consideration of the thresholds you know that issue of you know \$10,000 or do we go higher on contributions is a long-standing one that I think there's been some difference of opinion about that and it largely relates to and was that a significant number and you know should 9099 be treated differently than 10,000 and 1 and so I think while bright lines are helpful and you know important when you're gonna try to administer a streamlined program that maybe having some flexibility that would allow you to bump something out of streamlined into a warning letter or a bump something up makes some sense in terms of higher threshold we can discuss that I mean I think people will have different views on that like Steve I think the one time contributor you know I'm thinking of the ones that I'm aware of that made one contribution of ten and they're from Florida and they wonder why they're getting a call from someone in California about a fine and what's this all about and didn't I do my duty by making the contribution and that kind of thing went to my secretary I never saw the \$2,500 letter or whatever but there are some circumstances which might be mitigating and even at a higher number with a one-time contribution I don't know if it's I appropriate to go beyond this but you know I've certainly say that's an important part of this I would say in terms of process we also have to think for the benefit of commissioners who are going to be facing ongoing matters that they have to decide on whether to approve or not approve that somehow we need to take account of that too I mean the rules don't go into suspension while we're undergoing this process at the same time there needs to be some way to provide some guidance to commissioners and I think that was the thing that struck a number of this in the last year and a half or so that decisions were being made questions were being asked about you know what's are what's your standard how do you approach this what factors did you take into account in either setting a fine or excluding or including counts that that sort of thing are complicated questions and everyone understands that but I think at the same time maybe either before you know it's your own level or maybe in consultation with commissioners there could be some useful understanding that just because we're going through this evaluation process doesn't mean that that enforcement stops I was certainly never our

intention to suggest that that be the case we view it as an educational process as well as a process by which maybe policies can be clarified and approaches can be clarified that improve the process so if I can and I don't know if anyone else wants to comment but the general range of things that are on our broader list of things that we think should be included in this start with overall process issues the McPherson Commission talked about us establishing a statement of enforcement principles I know that in various iterations some of that has been done and maybe not formalized but it probably makes sense again and as I'll just recount them generally it seems to me that the focus the stated focus always seems to be well the most important serious violations are the ones that we focus our attention and resources on the most but you know then you've got just a boatload of smaller cases that wind up being in some sense easier to deal with and plate clearing exercises I'm sure from your part and then you get things like the you know non-payment of the fire you know the 50 dollar fee those kinds of referrals that you've got to sort of move through like the Python with the pray and get out of your system and so we understand that there are administrative issues there with dealing with an ongoing enforcement investigation workflow but establishing a set of policies and you know including streamlined and other non-fine remedies and that seems to us to be part of that so we have you know thoughts and comments about things that should be considered in the complaint intake and investigation process on interaction between the legal division and enforcement for example the most aggravating things in that general category have to do with people who are officials for the most part who face ongoing need to decide whether they can participate or not participate in making governmental decisions when there's annexed and enforcement complained about something which they've been alleged to have violated that may've directly or relate to the same issue that's going to be presented for on which they're seeking advice I say well someone's filed a complaint against me I must be doing something wrong you know the tendency there is to drop everything and try and figure out you know how do you pick up those cards again and decide whether you're gonna participate or not and are you going to rely on your own instinct can you rely on a city attorney or County counsel to advise you and if the response is going to be well there's an enforcement complaint here we can't talk with you or legal division can't talk with you about it because it might affect the enforcement case in some sense that's just not quite right and I think we need to figure out how to deal with that so public officials can operate you know putting a pin on whatever they and foresman investigation as they can't simply suspend their activities as an elected official sort of blindfolded about what their duties are so general subject the subpoena power and practice we raised some questions about that I think those have largely been addressed by changes in the practice but it's still worth reviewing how you how you issue you know internally issues subpoenas and circumstances in which you do that what about subpoenas to attorneys that was happening and caused a hullabaloo in our office I know and among others as well as that a practice that is you know when is that ever going to be invoked I think that's important for us to know resolution of cases warning letters and advisory letters we've talked a little bit about that closure letters sometimes issues are addressed in a closure letter where it says you violated the Act but we're closing it we're not gonna do anything and the person says oh well that's good there's no action but I've got this you know stain on my record you've said I've violated the Act is there any process that can be established that doesn't basically reopen and subject to relitigated that issue where someone says well I don't think I did violate the Act or you know you decided not to proceed against me and I left with something that says I've got a violation as opposed to you know insufficient evidence or whatever other word might be used to close something without leaving that kind of mark for potential future

Ms. West: so for clarification you're only talking about warning letters

Mr. Bell: yes.

Ms. West: okay

Mr. Bell: or something that's designated as a closure letter that's not explicitly identified as a warning Steve

Mr. Kaufman: (inaudible)

Mr. Bell: yeah or nothing no action was taken and then you know there were issues that were raised in the McPherson Commission about involved legislative changes like can there be an informal disposition without a hearing maybe we can talk about whether there are there are approaches that can be taken there from a regulatory or enforcement policy standpoint without legislation and what that might look like and then there are just some other general issues Stephen mentioned the private attorney general issue review of enforcement policy toward destruction and non-production of materials that were obtained in the course of administrative investigations when there's been a settlement or and whether those records would remain available for public records request purposes and Steve mentioned disgorgement as a possible solution if there's a prompt disgorgement to allow someone to avoid enforcement action if prompt disgorgement were taken either voluntarily or on a warrant and acted promptly basis and so I think those are some of the issues it's not an exhaustive list we can provide a little more detail but you know what we were thinking is that from the start of the process through conclusion of it and what's left in the public record is findings that could be used in the future for the aggravation factors and subsequent investigations and enforcement actions or among them so

Ms. West: that's great I would I really like to hear their Commission's policy on disgorgement considering for personal use cases they wouldn't even take it in consideration to lower the fine if the person paid back all the money I was like so this person paid back all the money this person paid back none of the money but they don't get consideration for that so those should be interesting discussion with them to see if they've changed

Mr. Bell: yeah and I would say that you know having that granular discussion in this context would be useful for commissioners to think about even though yet I don't think the process should be suspended while this is going on

Ms. West: Thanks Chuck

Mr. Silver: I just wanted to point out for the audience and those on the phones that the 2015 CPAA letter and the McPherson report that's been a reference a few times is available on our website the enforcement review page and also there's training materials that I've that I believe that was presented to the commissioners and there's any feedback on any of those items feel free to reach out to Galena or myself is there any other public comment on the streamline program

Mr. Fuhrman: hi this is Jon Fuhrman again one point that I might want to add whether a commission should webby fines in cases where local authorities the local County Registrar of Voters or the local city clerk the filing authority has already levied across a fine let's say for a late filing instance it seems to me that that sort of double jeopardy is somehow inappropriate

Ms. West: I'm so glad you brought that one up Jon because that's when we were gonna bring up ourselves from enforcement since it's a frustration that we have so I'll be happy to include that in the discussion

Mr. Fuhrman: Yes thank you

Mr. Silver: any other public comment ok great well seeing none I think we're gonna move forward with closing the meeting please feel free again to reach out to Galena myself before I do so also want to recognize Commissioner Cardenas in the audience so we appreciate you making the trip up from LA to come join us here today and thank you everybody else for coming