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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on April 10, 2019, in The William G. Brennan Hearing Room, at the Board’s offices.

2. **ROLL CALL**

Kathryn E. Doi, President and Public Member, called the meeting of the Board to order at 10:42 a.m.

Present: Ramon Alvarez C. (left at 2:05 p.m.) Timothy M. Corcoran, Executive Director
Anthony A. Batarse Jr. Robin P. Parker, Senior Staff Counsel
Kathryn Ellen Doi Danielle R. Phomsopha, Staff Counsel
Bismarck Obando
Ardashes “Ardy” Kassakhian
Glenn E. Stevens (left at 2:05 p.m.)

Absent: Rahim Hassanally
Victoria Rusnak

3. **PLEDGE OF ALLEGIANCE**

Mr. Kassakhian led the members and staff in the Pledge of Allegiance.

4. **PRESENTATION OF RESOLUTION TO JEAN SHIOMOTO, FORMER DIRECTOR, DEPARTMENT OF MOTOR VEHICLES**

At the January 24, 2019, General meeting, the members unanimously moved to present Jean Shiomoto, former DMV Director, with a Resolution in appreciation for her dedication and service to the State. Ms. Doi commented on how much she appreciated Ms. Shiomoto’s support of the Board; she invited former Executive Director Bill Brennan to attend her management meetings, and she attended and welcomed everyone at the

Board's Industry Roundtables. Ms. Shiomoto thanked the Board and commented that it was nice to be in the William Brennan room. She was glad that Mr. Corcoran has joined the Board to provide leadership.

5. **DISCUSSION AND CONSIDERATION OF RESPONDENT'S CHALLENGE TO DEALER BOARD MEMBER PARTICIPATION AND CONSIDERATION OF THIS PETITION PURSUANT TO SECTION 551.1 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

CALIFORNIA NEW CAR DEALERS ASSOCIATION v. VOLVO GROUP NORTH AMERICA LLC aka VOLVO CAR USA, LLC
Petition No. P-460-19

Discussion and consideration of Respondent's challenge to Dealer Board Member participation in this Petition pursuant to Section 551.1 of Title 13 of the California Code of Regulations, by the Public Members of the Board.

Ms. Doi provided the following background information:

On January 16, 2019, the California New Car Dealers Association, which is referred to as CNCDA, filed a Petition requesting first that the Board direct the Department of Motor Vehicles to conduct an investigation pursuant Vehicle Code section 3050(c)(1) and issue a written report of the investigation to the Board within 90 days of the date of the Board's order that the DMV investigate, or second that the Board order DMV to exercise its authority and power to initiate disciplinary proceedings against Volvo's manufacturer license or take other such steps as may be necessary to stop Volvo's vehicle subscription service known as "Care by Volvo" pursuant to Section 3050(c)(3) of the Vehicle Code.

On February 28, 2019, Volvo filed an "Affidavit of Colm A. Moran in Support of Respondent's Request for Recusal of Dealer Members of the New Motor Vehicle Board." CNCDA's opposition to the Affidavit was filed on March 20, 2019. In the Petition, CNCDA requested that both the public and dealer members of the Board consider its Petition and grant the relief requested.

Volvo contends that because this case involves a dispute between new motor vehicle franchisees and a new motor vehicle franchisor, and involves the determination of rights as between motor vehicle franchisees and a new motor vehicle franchisor, any participation by the dealer members of the Board would be a violation of Volvo's constitutional right to due process of law and a violation of the Vehicle Code. Volvo requests that the dealer members recuse themselves from participating in the Petition, including but not limited to considering, hearing, commenting on, advising other Board members on, or deciding the issues raised in the Petition.

Ms. Doi announced that Robin Parker, Board Senior Staff Counsel, advised the members that this is not a matter in which the Public Members may convene in a closed Executive Session, so all discussion and deliberations of the Public Members will be in the open meeting and on the record. Additionally, Michael Gowe, from the Attorney General's Office, who is assigned to work with the Board on its matters, will be present and available to answer Board members' questions.

Ms. Doi commented that the members have reviewed Volvo's Affidavit, CNCDA's Opposition, and the Petition. An attorney-client work product privilege memorandum from Ms. Parker was provided to the members summarizing the Affidavit and Opposition.

Ms. Doi indicated that the issue is whether the Dealer Members can participate in this proceeding, including asking questions potentially of the parties in connection with the Petition. Mr. Gowe provided guidance in this regard and indicated that per the Board's regulation (13 CCR § 551.1), the only Board Members that could participate in deciding the challenge would be non-Dealer members.

As read by Ms. Doi, Section 551.1 of the Board's regulations provides, in part, that: "An administrative law judge or board member shall voluntarily disqualify himself or herself and withdraw from any hearing or deliberation in which he or she cannot afford a fair and impartial hearing or consideration." All Board Members have an obligation to consider whether any matter that comes before the Board is something in which the individual member cannot afford a fair and impartial hearing or consideration.

The second part of the regulation is, "Any party may request the disqualification of any administrative law judge or board member by filing an affidavit prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member the issue shall be determined by the other members of the board."

When asked by Ms. Doi if Volvo has a position as to the participation of the Dealer Members in the presentation by counsel with respect to the decision that needs to be made today, Colm Moran, counsel for Volvo, indicated that it is Volvo's position that the discussion of recusal should be limited to the Public Members. Michael Cypers, counsel for CNCDA, indicated that Petitioner does not have an objection to the Dealer Members not participating in the decision of today's issue.

Mr. Alvarez and Mr. Batarse recused themselves from the discussion of whether the Dealer Members should be precluded from participation and consideration of the Petition.

Oral arguments were presented before the Public Members of the Board. Michael Cypers, Esq. of Glaser Weil Fink Howard Avchen & Shapiro LLP represented Petitioner. Also present on behalf of Petitioner was Anthony Bento, in-house counsel. Colm A. Moran, Esq. of Hogan Lovells US LLP represented Respondent.

The Public members of the Board deliberated in Open Session.

Mr. Alvarez did not agree to recuse himself from all proceedings related to the Petition. Mr. Batarse recuses himself from all proceedings and noted he is also a member of the CNCDA. Two dealer Board Members, Victoria Rusnak and Rahim Hassanally, were not present at the meeting.

After a lengthy discussion, the Public Members were leaning towards granting Volvo's challenge with respect to any dealer member that has a Volvo dealership, a dealership that has a subscription service, or is a member of the CNCDA. Mr. Gowe cautioned the Board that the bottom line is the public interest. It is not a direct economic conflict, but it is an indirect conflict that is potential and apparent. All of these things matter to ensure the integrity of the Board's decision-making process. Every dealer has an interest in the manufacturer not cutting them out through a subscription service being asserted in a Petition, even if their own dealership hasn't faced that problem yet. Additionally, Mr. Gowe remarked that the Board should err on the side of the public interest and fairness. That is what Section 551.1 of the Board's regulations says: fair and impartial tribunal. A Board Member can be present for quorum purposes, for example, but beyond that the Dealer Member should not participate whatsoever. Therefore, Dealer Members would not be able to offer public comments during a subsequent meeting pertaining to the Petition.

Mr. Kassakhian moved to grant Respondent's Affidavit challenging the participation of Dealer Members of the New Motor Vehicle Board. Mr. Obando seconded the motion. Mr. Kassakhian added that the Affidavit is granted in the public interest. The motion carried unanimously.

The Board took a lunch break until about 12:30 p.m.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

VALLEJO CJD, LLC, a California Limited Liability Company v. FCA US LLC, a Delaware Limited Liability Company
Protest Nos. PR-2589-18, PR-2590-18, PR-2591-18, and PR-2592-18

FAIRFIELD CJD, LP, a California Limited Partnership v. FCA US LLC, a Delaware Limited Liability Company
Protest Nos. PR-2593-18, PR-2594-18, PR-2595-18, and PR-2596-18

Ms. Doi read the following statement "comments by the parties or by their counsels that are made regarding any proposed decision, ruling, or order in this matter must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board." Furthermore, she indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e), therefore members of the public may not comment on such matters.

Ms. Doi indicated that the day prior to the meeting, the Board staff received a communication from the attorneys for the receiver requesting that the Board postpone its decision in this matter for 30 days so they could bring this matter to the attention of the Solano County Superior Court Judge who appointed the receiver. Ms. Doi requested counsel address this request in their comments.

Oral comments were presented before the Public Members of the Board. Halbert B. Rasmussen, Esq., Scali Rasmussen represented Protestant. Jack O. Snyder, Jr., Esq. of Barack Ferrazzano Kirschbaum & Nagelberg LLP represented Respondent.

7. CLOSED EXECUTIVE SESSION DELIBERATIONS

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED ORDER

VALLEJO CJD, LLC, a California Limited Liability Company v. FCA US LLC, a Delaware Limited Liability Company

Protest Nos. PR-2589-18, PR-2590-18, PR-2591-18, and PR-2592-18

FAIRFIELD CJD, LP, a California Limited Partnership v. FCA US LLC, a Delaware Limited Liability Company

Protest Nos. PR-2593-18, PR-2594-18, PR-2595-18, and PR-2596-18

Consideration of the Administrative Law Judge's "Proposed Order Granting Respondent's 'Motion to Dismiss Protests or, in the Alternative, for a Finding of Good Cause to Terminate Based on Uncontested Evidence,'" by the Public Members.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Order. Mr. Kassakhian seconded the motion. The motion carried unanimously.

8. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Doi announced the decision in Agenda Item 7.

Ms. Doi indicated that Mr. Stevens needs to leave by 2:00 p.m., so the next matter will be taken out of order.

9. **APPROVAL OF THE MINUTES FROM THE JANUARY 24, 2019, GENERAL MEETING**

This matter was postponed until after Agenda Item 21.

10. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO DAVID C. LIZÁRRAGA, FORMER PUBLIC MEMBER**

This matter was postponed until after Agenda Item 21.

11. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE BOARD PRESIDENT**

This matter was postponed until after Agenda Item 21.

12. **DISCUSSION CONCERNING PENDING LEGISLATION - EXECUTIVE COMMITTEE**

This matter was postponed until after Agenda Item 21.

13. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

This matter was postponed until after Agenda Item 21.

14. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

This matter was postponed until after Agenda Item 21.

15. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

This matter was postponed until after Agenda Item 21.

16. **STATUS REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2018-2019 AND VEHICLE SALES ESTIMATES FROM CALENDAR YEAR 2018 - FISCAL COMMITTEE**

This matter was postponed until after Agenda Item 21.

17. **CONSIDERATION OF PROPOSED REGULATIONS AMENDING SECTIONS 550 (DEFINITION OF "PARTY" OR "PARTIES") AND 551.12 (NOTICE OF ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES; PEREMPTORY CHALLENGES) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until after Agenda Item 21.

18. **CONSIDERATION OF PROPOSED REGULATION AMENDING THE BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until after Agenda Item 21.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

This matter was postponed until after Agenda Item 21.

20. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE

The members convened in Closed Executive Session to discuss Agenda Item No. 20.

21. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Doi announced that the Board completed the performance evaluation of the Executive Director. The Administration Committee will review the evaluation procedures that the Board uses to conduct its personnel evaluations of the Executive Director for next year.

9. **APPROVAL OF THE MINUTES FROM THE JANUARY 24, 2019, GENERAL MEETING**

Ms. Doi requested that in the future, she would like for the approval of the minutes to be the first item on the agenda.

Mr. Stevens moved to adopt the January 24, 2019, General Meeting minutes. Mr. Kassakhian seconded the motion. The motion carried unanimously.

10. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO DAVID C. LIZÁRRAGA, FORMER PUBLIC MEMBER**

Mr. Stevens moved to present a Resolution to David C. Lizárraga, former Public Member, in recognition of his contribution to the New Motor Vehicle Board. Mr. Obando seconded the motion. The motion carried unanimously.

11. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE BOARD PRESIDENT**

Ms. Doi postponed this matter until the June meeting.

12. **DISCUSSION CONCERNING PENDING LEGISLATION - EXECUTIVE COMMITTEE**

- a. Pending Legislation of Special Interest: Assembly Bill 179 (Assembly Member Reyes)
- b. Pending Legislation of General Interest: Assembly Bill 380 (Assembly Member Frazier)
- c. Pending Federal Legislation of General Interest: None

This matter was postponed until after Agenda Item 18.

13. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

This matter was postponed until after Agenda Item 18.

14. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

This matter was postponed until after Agenda Item 18.

15. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

This matter was postponed until after Agenda Item 18.

16. **STATUS REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2018-2019 AND VEHICLE SALES ESTIMATES FROM CALENDAR YEAR 2018 - FISCAL COMMITTEE**

This matter was postponed until after Agenda Item 18.

17. **CONSIDERATION OF PROPOSED REGULATIONS AMENDING SECTIONS 550 (DEFINITION OF "PARTY" OR "PARTIES") AND 551.12 (NOTICE OF ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES; PEREMPTORY CHALLENGES) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning revisions to proposed regulatory amendments to Section 550(r) of Title 13 of the California Code of Regulations pertaining to the definition of "party" or "parties" and Section 551.12 pertaining to preemptory challenges. Ms. Parker indicated that the staff is seeking an amendment to the preemptory challenge regulation to exclude an intervenor from filing a preemptory challenge because they are typically aligned with one side or the other. The definition of "party" or "parties," for purposes of a preemptory challenge, would be amended to exclude an intervenor. (13 CCR § 550)

The proposed revisions are as follows:

13 CCR § 550. Definitions.

For the purposes of these regulations:

...

(r) "Party" or "Parties" includes the petitioner, protestant, respondent, department, appellant, director, or intervenor. For purposes of a preemptory challenge, an intervenor is not a party.

...

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075 and 3076 Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

13 CCR § 551.12. Notice of Assignment of Administrative Law Judges; Peremptory Challenges.

(a) The name of the administrative law judge assigned to a protest or petition proceeding will be noted on the order of time and place of hearing. An amended order or notice will be issued if a different administrative law judge is subsequently assigned to the proceeding.

(b) Each party, excluding an intervenor, is entitled to one peremptory challenge of the administrative law judge assigned to preside over the hearing on the merits of a petition as required by Vehicle Code section 3050(c) or the administrative law judge assigned to preside over the hearing on the merits of a protest as required by subdivision (d) of Vehicle Code section 3050, based solely upon satisfying all of the following requirements:

(1) The peremptory challenge must be filed with the board no later than either 20 days from the date of the order of time and place of hearing identifying the merits administrative law judge or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier.

(2) The peremptory challenge may be made by the party, the party's attorney, or authorized representative appearing in the proceeding, and shall be by written declaration substantially in the following form: "I am a party to [case name and number] and am exercising my right to a peremptory challenge regarding ALJ [name], pursuant to Section 551.12 and Government Code section 11425.40(d)"; and

(3) The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the merits hearing, whichever is earlier.

(d) No peremptory challenge shall be considered or granted if it is not made within the time limits set forth above.

(e) A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes.

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the merits hearing shall not be granted by reason of a peremptory challenge. Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a), and 3080(a).

(g) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

Note: Authority cited: Sections 3050, 3066 and 3080, Vehicle Code. Reference: Section

3050(a), Vehicle Code; and Section 11425.40, Government Code.

Ms. Doi read the following statement into the record:

I would delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They'll be considered instead by the Executive Committee and ultimately be reported to the Board at a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

Mr. Stevens moved to adopt the proposed regulations. Mr. Obando seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF PROPOSED REGULATION AMENDING THE BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning revisions to proposed regulatory amendments to Section 599 of Title 13 of the California Code of Regulations pertaining to the Board's Conflict of Interest Code. Ms. Phomsopha indicated that during the biennial review of the Board's Conflict of Interest Code, Board staff identified language that needed to be updated for brevity and consistency. Preliminary review as required by the Fair Political Practices Commission has been conducted and the updated Conflict of Interest Code is ready for public notice upon approval of the Board.

The proposed revisions are as follows:

13 CCR Section 599

~~CONFLICT OF INTEREST~~ CONFLICT OF INTEREST CODE FOR THE NEW MOTOR VEHICLE BOARD

The Political Reform Act (~~Government Code Sections~~ Gov. Code, § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (~~2 Cal. Code of Regulations Section 18730~~) that contains the terms of a standard conflict of interest ~~conflict of interest~~ code, ~~which~~ that can be incorporated by reference in an agency's code. (Cal. Code Regs., tit. 2, § 18700) After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of ~~2 Cal. Code of Regulations Section 18730~~ and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and ~~establishing~~ disclosure categories, constitute the conflict of interest ~~conflict of interest~~ code of the New Motor Vehicle Board (Board).

Board Members and the Executive Director electronically file their statements of economic interests with the Fair Political Practices Commission; the Board does not retain a copy. Individuals holding any other designated positions shall file statements of economic interests directly with the Board. ~~Upon receipt of the statements of Board Members and the Executive Director, the Board shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. (Gov. Code Sec. 81008.) The Board shall forward copies of all other statements for appointed members of multi-member boards and commissions to the Fair Political Practices Commission. All other statements will be retained by the Board.~~

Authority cited: Section 3050(a), Vehicle Code; Sections 87300, 87304 and 87306, Government Code. Reference: Section 81000, et seq., Government Code.

CONFLICT OF INTEREST CODE FOR THE
NEW MOTOR VEHICLE BOARD

APPENDIX A – DESIGNATED POSITIONS

Designated Positions	Assigned Disclosure Category
<u>EXECUTIVE DIVISION</u>	
Board Member	1
Executive Director	1
<u>LEGAL DIVISION</u>	
Administrative Law Judge (all levels)	1
<u>Attorney (all levels)</u>	1
Staff Counsel III	4
Staff Counsel	4
Staff Services Manager 1	1
Staff Services Analyst	1
Associate Governmental Program Analyst	1
Consultant/New Position	*

* Consultants and new positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitations:

The Executive Director may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Director is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest ~~conflict of interest~~ code. (Gov. Code, § Sec. 81008-) Nothing herein excuses any such consultant from any other provision of the conflict of interest ~~conflict of interest~~ code.

~~APPENDIX B-DISCLOSURE CATEGORY~~ APPENDIX B-DISCLOSURE CATEGORY

Category 1

Designated positions assigned to this category must report:

- (a) Income, including receipt of gifts, loans, and travel payments, received during the reporting period from an individual or entity which the designated position knows or has reason to know is:
 - (1) Any licensee subject to the jurisdiction of the New Motor Vehicle Board pursuant to Vehicle Code section 3050, et seq.;
 - (2) An applicant to the Board who has or has had during the filing period any proceeding pending before the Board;
 - (3) A party contracting with the Board or engaged in the performance of work or services of the type utilized by the Board including, the provision of goods, services, office space or realty.
- (b) Investments held during the reporting period in any business entity, which the designated position knows or has reason to know is described in parts (1), (2) or (3) of subsection (a).
- (c) The fact that the designated position, during the reporting period was a director, officer, partner, trustee, employee or held any position of management in a business entity the designated position knows or has reason to know is described in parts (1), (2) or (3) of subsection (a).

Mr. Obando moved to adopt the proposed regulation. Mr. Kassakhian seconded the motion. The motion carried unanimously.

The same statement Ms. Doi read in Agenda Item 17 applies to this regulation.

Ms. Doi indicated that Mr. Alvarez and Mr. Stevens left the meeting.

[The Board did not have a quorum for action items so it continued with informational items.]

12. **DISCUSSION CONCERNING PENDING LEGISLATION - EXECUTIVE COMMITTEE**

- a. Pending Legislation of Special Interest: Assembly Bill 179 (Assembly Member Reyes)
- b. Pending Legislation of General Interest: Assembly Bill 380 (Assembly Member Frazier)

- c. Pending Federal Legislation of General Interest: None

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha indicated that the CNCDA's franchise bill, Assembly Bill 179, will be heard in the Assembly Transportation Committee on April 22. Assembly Bill 380 has been amended to change the term of the Transportation Inspector General from six years to four years.

13. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency.

Ms. Doi indicated that this matter was deferred until the June meeting.

14. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel, and Holly Victor concerning training programs attended by the staff since the last report. Ms. Victor reported that from February 2018 until now, the Board has spent \$16,658 registering staff and Administrative Law Judges for training. This did not include travel, mileage and other related expenses.

15. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Robin Parker, and Danielle Phomsopha along with summaries of the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act, and Public Records Act. A number of resource materials were also provided electronically on the Board's website. Ms. Parker mentioned that there were no substantive changes to the Administrative Procedure Act nor where there any cases that impacted the Board. With regards to the Bagley-Keene Open Meeting Act, the legislative changes do not pertain to the Board. Ms. Phomsopha indicated that with regards to the Political Reform Act, the gift limit increased to \$500. There were also regulatory changes pertaining to the materiality standard for financial interests in real property and the definition of related business entities was amended. With regards to the Public Records Act, there were no substantive changes that would impact the Board's compliance.

16. **STATUS REPORT FOR THE 2ND QUARTER OF FISCAL YEAR 2018-2019 AND VEHICLE SALES ESTIMATES FROM CALENDAR YEAR 2018 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 2nd quarter of fiscal year 2018-2019 and vehicle sales estimates from calendar year 2018. Ms. Luke indicated that the Board began with a budget appropriation of \$1.68 million, expenditures were \$757,000, the beginning reserve balance was \$2.3 million, revenues totaled \$1.4 million, and the current reserve balance is \$3 million. The Board expended 45% of its appropriated budget through the second quarter of fiscal year 2018-2019.

Ms. Luke remarked that data provided by the DMV shows vehicles sales of 2.3 million units for 2018. This is slightly up from 2017, which had 2.2 million units sold.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Corcoran provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. With regards to the workforce succession planning, Mr. Corcoran indicated that DMV staff began the process of sitting down with Board staff to conduct what is known as a State Leadership Accountability Acts, or the SLAA, Risk Assessment. The number one risk is workforce and succession planning. So the Board is waiting to work with DMV's Enterprise Risk Management Division for the formal process involved in generating a workforce succession plan. Mr. Corcoran thought the SLAA process will help encourage this. This report will likely be a public document. In terms of succession planning, one key element is to identify the talent you already have; to work to retain that talent and develop those individuals to move up. Mr. Corcoran happily announced that Holly Victor was promoted to a Staff Services Analyst position.

Ms. Parker reported that the Board's oldest protest from 2015, *Timmons Subaru*, should be dismissed within a week or so. Judge Woodward Hagle was very effective in helping the parties conclude their settlement. Additionally, Ms. Parker mentioned that a Proposed Order granting Respondent's motion to dismiss in the *Volkswagen Momentum* case was issued and will be on the June agenda for Board consideration. There should be three-to-four cases and the *CNCDA v. Volvo* Petition in June so it will be a long meeting. With regards to court matters, the deadlines to file a Notice of Appeal in *Asian Pacific Industries* and *Fiat Chrysler Automobiles* (Dependable Dodge) are coming due so the staff will monitor this. Lastly, in the *General Motors* case involving Folsom Chevrolet, the Motion to Transfer the case was denied by the court; it will remain in Los Angeles County Superior Court.

Ms. Parker reported that case management is extremely busy with 70 open protests and seven law and motion matters pending. At one point this year, there were 80 open protests.

Ms. Phomsopa indicated that the hearing in *Barber Honda* is set for August. The preliminary hearing in *First Priority Bus* is set for May 6. Since the members received the written report, four establishment protests and three warranty protests were dismissed, and a Proposed Stipulated Decision and Order was adopted resulting in another termination protest being dismissed.

Mr. Corcoran also mentioned that the Board's Industry Roundtable is being subsumed by the NAMVBC Annual Conference in Sacramento on September 18-21. He also reminded the members that Ms. Kindel is the Treasurer for the NAMVBC. Ms. Kindel noted that there are about 10 topics confirmed and that an additional 10 topics will be necessary. The Board Members were encouraged to attend. Ms. Doi inquired as to the role of the host state's Board. Ms. Kindel indicated that the host state coordinates the event, secures the facility, plans social events for the group, manages transportation issues, and participates in building the agenda. The Board Members would be the face of the New Motor Vehicle Board and part of the hosting committee. There was a discussion about whether the Board should also have a Board meeting during this time period.

22. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 2:30 p.m.

Submitted by

Original Signature upon request
TIMOTHY M. CORCORAN
Executive Director

APPROVED: Original Signature upon request
Kathryn E. Doi
President
New Motor Vehicle Board