

Common Sense Business Regulation (BWC Rules)

(Note: The below criteria apply to existing and newly developed rules)

Rules Chapter

Rule Review

1. The rule is needed to implement an underlying statute.

Citation: 4123.32 (C)

2. The rule achieves an Ohio specific public policy goal.

What goal(s): The proposed rule would protect BWC from efforts to structure purchase transactions to avoid legitimate liability.

3. Existing federal regulation alone does not adequately regulate the subject matter. Yes federal regulation does not address liability and experience transfers regarding Workers' Compensation.

4. The rule is effective, consistent and efficient.

5. The rule is not duplicative of rules already in existence.

6. The rule is consistent with other state regulations, flexible, and reasonably balances the regulatory objectives and burden.

7. The rule has been reviewed for unintended negative consequences.

8. Stakeholders, and those affected by the rule were provided opportunity for input as appropriate.

Explain: January 29, 2010 BWC emailed the proposed changes to the Executive President of the Service Association of Ohio, President of the Workers' Compensation Forum and the Chair of the Workers' Compensation Committee of the Ohio State Bar Association.

The President of the Workers' Compensation Forum sent back six comments. Their concerns:

- The impact on rating programs, especially group rating, when a retroactive recalculation of the employer's policy takes place.
- BWC is trying to circumvent the Supreme Court's decision on "Valley Roofing".
- They would like to see rules around protecting an employer, who acquires only the assets of the former employer.
- Go back to the way BWC previously allowed the successor employer to retain the former employer's policy.

9. The rule was reviewed for clarity and for easy comprehension.

10. The rule promotes transparency and predictability of regulatory activity.

11. The rule is based on the best scientific and technical information, and is designed so it can be applied consistently.

12. The rule is not unnecessarily burdensome or costly to those affected by rule.

If so, how does the need for the rule outweigh burden and cost? This rule change is necessary to safeguard the fund from efforts to structure purchase transactions to avoid legitimate liability.

13. The Chief Legal Officer, or his designee, has reviewed the rule for clarity and compliance with the Governor's Executive Order.

4123-17-02 Rule change Executive Summary

Overview

Ohio Revised Code Section 4123.32 provides that the Administrator, with the advice and consent of the Board of Directors, shall adopt rules to protect the state insurance fund, including:

(C) Such special rules as the administrator considers necessary to safeguard the fund and that are just in the circumstances, covering the rates to be applied where one employer takes over the occupation or industry of another or where an employer first makes application for state insurance, and the administrator may require that if any employer transfers a business in whole or in part or otherwise reorganizes the business, the successor in interest shall assume, in proportion to the extent of the transfer, as determined by the administrator, the employer's account and shall continue the payment of all contributions due under this chapter.

BWC has adopted Ohio Administrative Code 4123-17-02 under the authority of this statute. BWC amended Ohio Administrative Code 4123-17-02 effective July 27, 2006, for all successions taking place on or after September 1, 2006. The rule states that where the employer wholly succeeds another employer in the operations of a business, BWC will transfer the financial rights and obligations of the former employer to the successor employer. Ohio Administrative Code 4123-17-02 addresses transfers between a succeeding employer and its predecessor. When BWC receives information that a legal entity wholly succeeded one or more legal entities, the predecessor's policy will be combined into the successor's policy. This combination will transfer the predecessor's rights and obligations to the successor along with the predecessor's experience. Moreover, this same practice is followed by the Ohio Department of Jobs and Family Services under Ohio Revised Code 4141.24.

Background Law

On June 16, 2009, the Supreme Court of Ohio decided *State ex rel. Valley Roofing, L.L.C. v. Ohio Bur. of Workers' Comp.*, 122 Ohio St.3d 275, 2009-Ohio-2684. The court held that, when a business operation is purchased from an intermediary bank and the transfer of the employer's business to this third party was involuntary, the purchaser is not the successor in interest. This case interpreted the BWC statute and rule on successorships. BWC is concerned that employers may use the *Valley Roofing* case to avoid liability for transfers of ownership where there should be successor liability. The proposed rule would protect the BWC from efforts to structure purchase transactions to avoid legitimate liability. It will not overrule the Supreme Court's determination in *Valley Roofing*, but will give direction and bring consistency to those scenarios reviewed at BWC which arise pursuant to transfers under Ohio Administrative Code 4123-17-02.

Amendments to rule 4123-17-02

The amendment to rule 4123-17-02 would find successor liability where:

- (a) The purchaser expressly or impliedly agrees to assume such obligations;
- (b) The succession transaction amounts to a *de facto* consolidation or merger;
- (c) The successor is a continuation of the predecessor; or
- (d) The transaction is fraudulent to escape workers' compensation obligations.

4123-17-02 Basic or manual rate.

(A) The "basic or manual rate" is hereby expressed as the unit of premium per one hundred dollars of payroll for accident and disease coverage.

(B) Succeeding employers -- experience.

- (1) Where one legal entity, not having coverage in the most recent experience period, wholly succeeds another legal entity in the operation of a business, his or its rate shall be based on the predecessor's experience within the most recent experience period.
- (2) Where a legal entity having an established coverage or having had experience in the most recent experience period wholly succeeds one or more legal entities having established coverage or having had experience in the most recent experience period and at least one of the entities involved has a merit rating experience, the experience of all the involved entities shall be combined to establish the rate of the successor.
- (3) Where a legal entity succeeds in the operation of a portion of a business of one or more legal entities having an established coverage or having had experience in the most recent experience period, the successor's rate shall be based on the predecessor's experience within the most recent experience period, pertaining to the portion of the business acquired by the successor.

Pursuant to this rule, the bureau shall provide to the parties to the transfer of experience the necessary forms and instructions to complete the transfer of the appropriate payrolls and claims. Each party to the transfer of experience shall sign the completed forms. The bureau shall review the completed forms and if any questions arise, the bureau may conduct a premium audit on each party's risk account.

- (4) When any combination or transfer of experience is indicated under any of the provisions of this rule, the effective date of such combination or transfer shall be the beginning date of the next following payroll reporting period. In cases where an entity not having coverage wholly succeeds another entity or in cases where the date of succession is determined to be January first or July first, the experience of the predecessor shall be transferred to the successor-employer effective as of the actual date of succession.
- (5) For an out of state employer purchasing an existing Ohio operation, the bureau may use the out of state experience of the employer as a factor in determining the employer's experience.
- (6) Whenever one employer succeeds another employer in the operation of a business under paragraphs (B)(1) to (B)(5) of this rule, the bureau shall transfer

the predecessor's experience under the workers' compensation law to the successor if one of the following criteria is met:

(a) the successor expressly or impliedly agrees to assume such obligations;

(b) the succession transaction amounts to a *de facto* consolidation or merger;

(c) the successor is merely a continuation of the predecessor; or.

(d) the succession transaction is entered into fraudulently for the purpose of escaping obligations under the workers' compensation law.

If one or more of the criteria set forth in this paragraph is met, the bureau shall transfer the predecessor's experience under the workers' compensation law, regardless of whether the predecessor's transfer to the successor was voluntary or through an intermediary bank or receivership.

(C) Succeeding employers -- risk coverage transfer.

(1) Whenever one employer succeeds another employer in the operation of a business in whole or in part, the successor shall notify the bureau of the succession. Where one employer wholly succeeds another in the operation of a business, the bureau shall transfer the predecessor's rights and obligations under the workers' compensation law to the successor if one of the following criteria is met:

(a) the successor expressly or impliedly agrees to assume such obligations;

(b) the succession transaction amounts to a *de facto* consolidation or merger;

(c) the successor is merely a continuation of the predecessor; or.

(d) the succession transaction is entered into fraudulently for the purpose of escaping obligations under the workers' compensation law.

If one or more of the criteria set forth in this paragraph is met, the bureau shall transfer the predecessor's rights and obligations under the workers' compensation law, regardless of whether the predecessor's transfer to the successor was voluntary or through an intermediary bank or receivership.

(2) The successor shall be credited with any credits of the predecessor, including the advance premium security deposit of the predecessor. This paragraph shall apply where an employer wholly succeeds another employer in the operation of a business on or after September 1, 2006.

~~(2)~~(3) Transfer of risk coverage may be retroactive to the date of succession.

~~(3)~~(4) The successor must preserve the predecessor's payroll records for the five years preceding the date of succession.

~~(4)~~(5) A legal entity may be assigned only one risk. Where a legal entity succeeds one or more risks, he or it shall be assigned a single risk designation.



Bureau of Workers' Compensation

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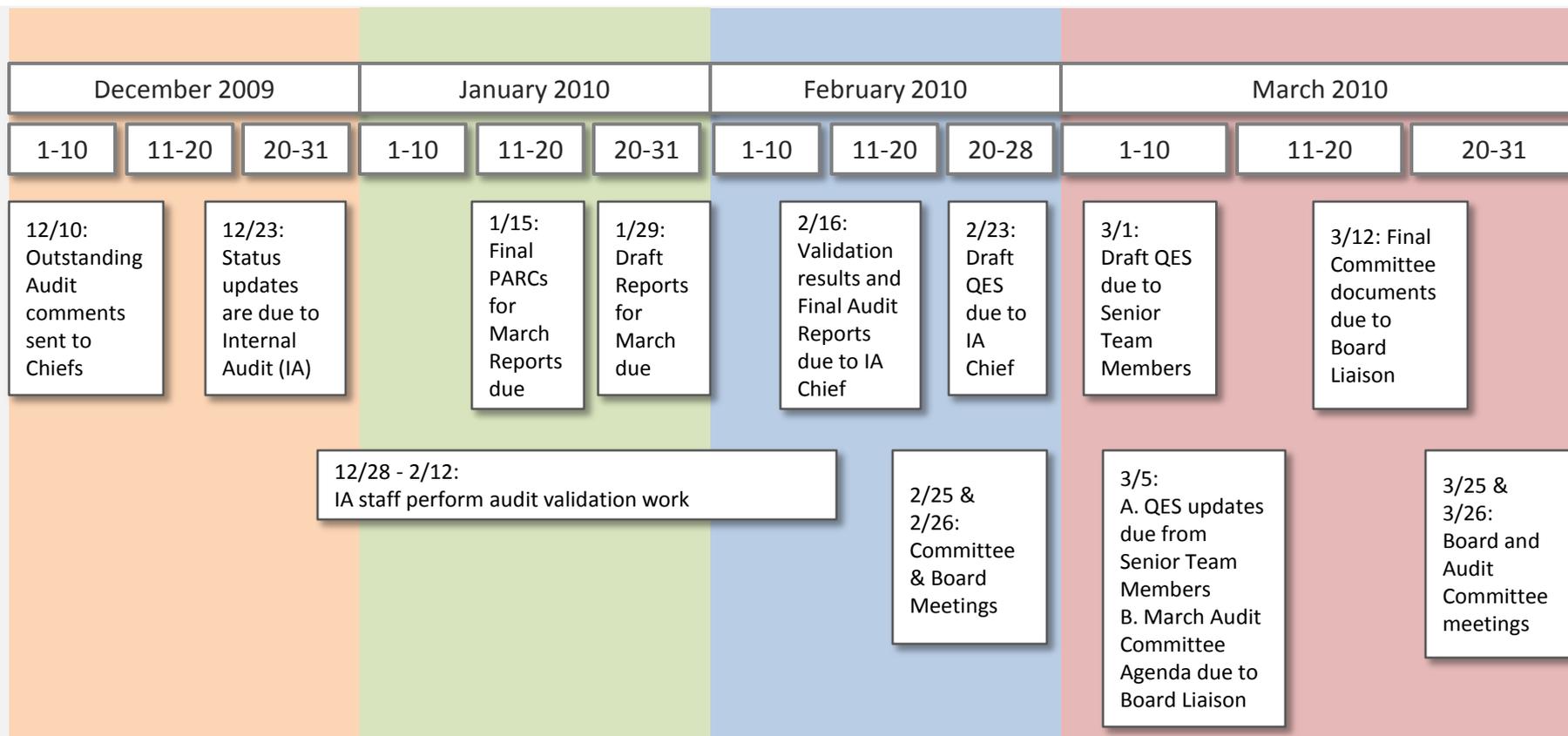
Governor **Ted Strickland**
Administrator **Marsha P. Ryan**

ohiobwc.com
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Stakeholder feedback and recommendations for changes to the BWC Successorship Liability Rule 4123-17-02

Rule # / Subject Matter	Stakeholder	Draft Rule Suggestions	Stakeholder Rationale	BWC Response	Resolution
1 Transfer impact on Group Rating.	Workers Comp Forum	Rule should address impact on group formation & rating.	Groups should not suffer "re-rate" fees from acts of fraudulent employers.	There is no material impact on the group rating process from this rule change. It is anticipated that a small number of transfers will be completed that would not have otherwise occurred. Provisions already exist to exclude the impact of transfers when there is misrepresentation.	BWC will maintain the current recommendation as proposed.
2 Supreme Court Decision	Workers Comp Forum	Additional and special rules not needed.	Rule is unnecessary and circumvents Supreme Court decision.	The rule change does not circumvent the Supreme Court decision in Valley Roofing. It clarifies the circumstances under which transfers of experience will still be made. True "Valley Roofing" scenarios will not be subject to transfer or experience and/or liability.	BWC will maintain the current recommendation as proposed.
3 Policy Numbers	Workers Comp Forum	Allow successor to retain predecessor Policy number.	Reduced paperwork.	Separate legal entities require separate policy numbers. It is important for BWC to be able to separately and easily identify the parties to a transfer. Retaining the predecessor's policy number causes the successor to inherit information that is not theirs, e.g. historical coverage status. Administratively, using different policy numbers is the best approach.	BWC will maintain the current recommendation as proposed.
4 Asset Only Purchases	Workers Comp Forum	Allow for Asset Only purchases without Transfer of experience or liability.	Not a true succession.	Asset Only purchases not subject to transfer of experience or liability are unaffected by this rule change.	BWC will maintain the current recommendation as proposed.

Internal Audit Timelines – March Quarterly Executive Summary



12-Month Audit Committee Calendar

Date	February 2010
2/25/2010	1. Survivorship Rule 4123-17-02 (1 st Reading)
	2. OBM Information Technology Audit Update (Executive Session)
Date	March 2010
3/25/2010	1. Internal Audit QES Review
	2. Survivorship Rule 4123-17-02 (2 nd Reading)
	3. Discount Rate Recommendation
	4. Inspector General Annual Report (Executive Session)
Date	April 2010
4/29/2010	1. Discussion of External Audit
	2. FY 2011 Administrative Budget (1 st Reading)
	3. Quarterly Litigation Update (Executive Session)
	4. Internal Audit Charter (Placeholder)
	May 2010
5/27/2010	1. FY 2011 Administrative Budget (2 nd Reading)
	June 2010
6/17/2010	1. FY 2011 Financial Projections (1 st Reading)
	2. FY 2011 Audit Plan
	3. Internal Audit QES Review
	4. External Audit Update
	July 2010
7/28/2010	1. FY 2011 Financial Projections (2 nd Reading)
	2. External Audit Update
	3. Quarterly Litigation Update (Executive Session)
	4. FY 2012/13 Biennial Budget (1 st Reading)
	August 2010
8/26/2010	1. BWC Code of Ethics Review
	2. FY 2012/13 Biennial Budget (2 nd Reading)
	September 2010
9/23/2010	1. Internal Audit QES Review
	2. Inspector General Semi-Annual Report (Executive Session)
Date	October 2010
10/21/2010	1. Audit Committee Charter Review (1 st Reading)
	2. Quarterly Litigation Update (Executive Session)
Date	November 2010
11/18/2010	1. External Audit Update

12-Month Audit Committee Calendar

Date	December 2010
12/15/2010	1. Internal Audit QES Review
	2. Office of Budget and Management Update – BWC Staff Transfer
	<i>Calendar 2011</i>
Date	January 2011
TBD	1. Annual Disaster Recovery/Business Continuity Plan
	2. External Audit Comments - Update
	3. Quarterly Litigation Update (Executive Session)



OBM

Office of Internal Audit

IT Audit Approach



Joe Bell

Chief Audit Executive

OBM Office of Internal Audit

Raj Subramanian

Chief of Business Process and IT Audit

OBM Office of Internal Audit

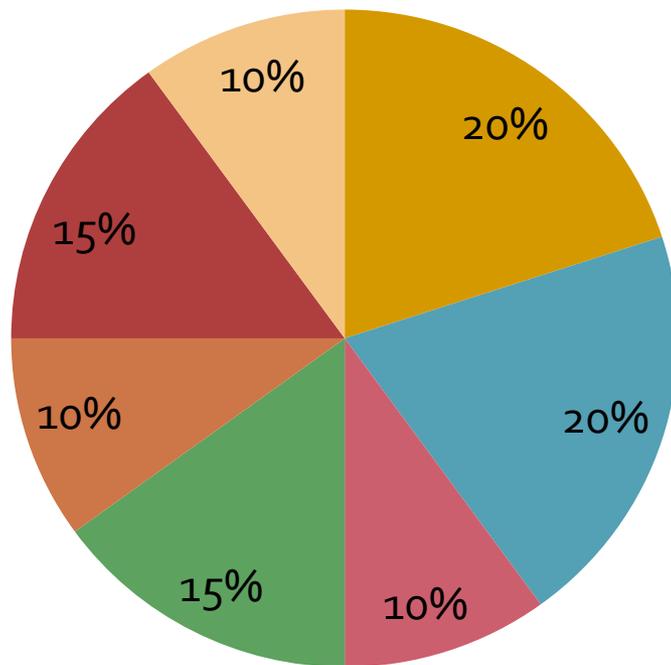
Agenda

-  **OIA Annual Audit Process**
-  **Audit Prioritization**
-  **FY 2010 BWC Risk Map**
-  **OIA Audit Process**
-  **IT Audit Status**

OIA Annual Audit Process



Audit Prioritization: Risk Factors



- Control Environment (20%)
- Changes: System, Process, People (20%)
- Prior Audits (10%)
- Process Size / Complexity (15%)
- Potential for Fraud, Waste, Abuse (10%)
- Stakeholder Concerns (15%)
- Financial / Operational Reporting (10%)

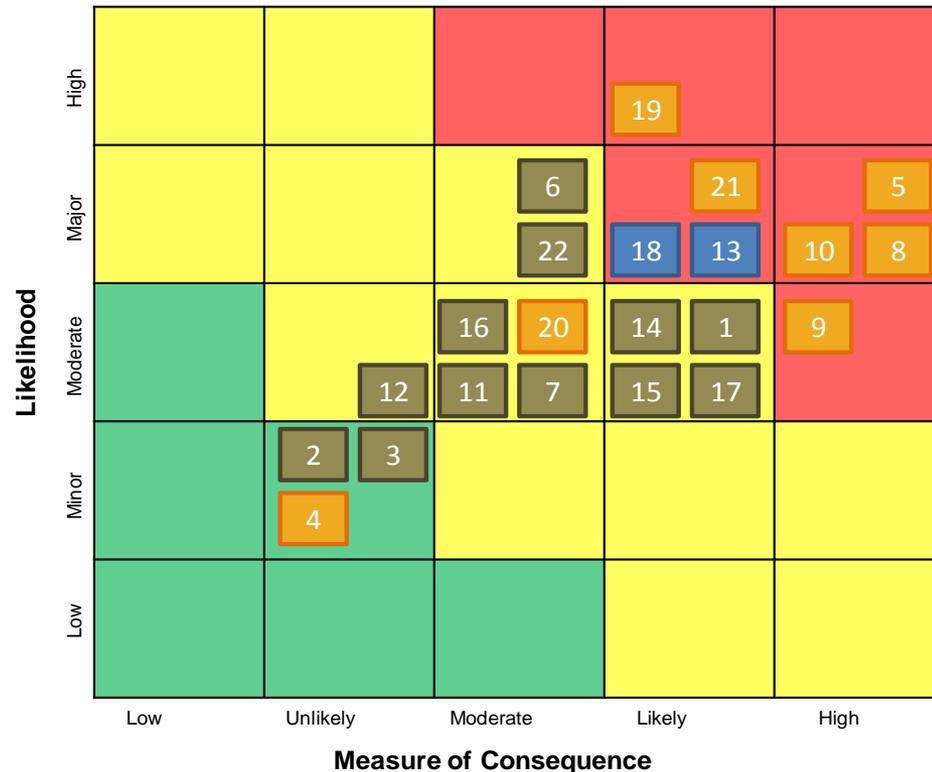
FY 2010 BWC Risk Map

	List of Audit Universe	OIA Level of effort
	FINANCIAL RISKS	
1	Revenue: Fees & Assessments	
2	Revenue: Other Sources	
3	Inventory	
4	Capital Assets	
5	Cash & Investments	
6	Expenditures: Payroll	
7	Expenditures: State Funds	
8	Expenditures: Claims	
9	Financial Reporting	
	OPERATIONAL RISKS	
10	Managed Care Organizations	
11	Regional Offices	
12	Third Party Administrators / Outsourcing	
13	IT Application Development	Large
14	IT Business Resiliency	
15	IT Enterprise Architecture	
16	IT Governance	
17	IT Project Management	
18	IT Security & Privacy	Medium
	STRATEGIC RISKS	
19	Self-Insurance	
20	Reserves/Actuarial Analysis	
21	Rate-Making	
22	Fraud & Investigative Unit	
	ENTERPRISE RISKS	
	See page 32 for details	

Bureau of Workers' Compensation Risk Map

Note: BWC has a separate financial statement audit.

Fiscal Year 2010 Audit Plan



Red – high impact/high likelihood Yellow - medium Green - low impact/low likelihood

■ OIA Audits
 ■ BWC Internal Audits
 ■ Not Planned

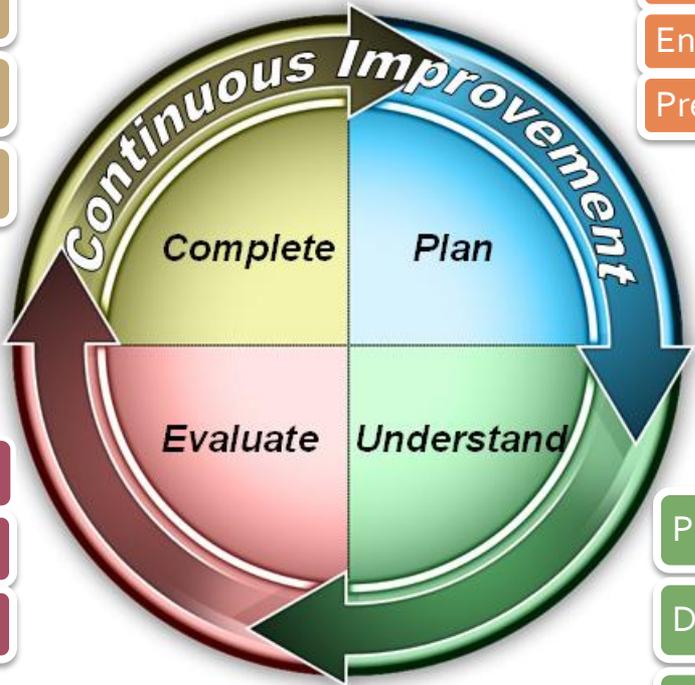
OIA Audit Process

- Deliverable to Management
- Exit Conference
- Communication to Audit Committee
- Follow-up on Remediation

- Scope based on Annual Audit Plan
- Engagement Pre-Planning
- Entrance Conference
- Preliminary Survey

- Develop Testing Plan
- Perform Tests
- Validate / Communicate Results

- Process Walk-through
- Document Business Process
- Finalize Understanding



IT Audit Status

Engagement	Kick-off Date	Exit Date	Status
Mobile Data Security Audit	Aug. 25, 2009	Dec. 8, 2010	Complete
Database Vulnerability Consulting	Oct. 16, 2009	Feb. 22, 2009	Complete
PARC Validation	Oct. 13, 2009		In Progress
Data Warehouse Audit	Feb. 17, 2010		In Progress
Rates & Payment Consulting			Cancelled
HB 648 Consulting			Pending

Thank You !

A decorative graphic consisting of three overlapping arrow shapes pointing to the right. The leftmost arrow is green, the middle one is blue, and the rightmost one is yellow. The yellow arrow is the largest and contains the text "Questions?".

Questions?