

**ABA RPPT-Tax Section Joint Meeting – San Francisco
Program of Employee Benefit Plans and Other Compensation Arrangements Group
Friday, September 16, 2005 (10:30am to 12:30pm)**

**Outline for an RPPT Employee Benefits Group-sponsored Workshop Program covering
Fiduciary Affirmative Disclosure Obligations**

Fact Pattern Precip: In early 2006, Ms. Wendy Welkim, EVP of Human Resources at Floors Unlimited, Inc., an NYSE-traded public corporation, is called to a meeting with Floors' CEO, Ira Scible and Floors' General Counsel, Justin Jurise. Ira opens the meeting by noting to Wendy and Justin that Floors' 1st quarter 2006 results are likely to be bad -- very bad -- as an industry report will be coming out shortly stating that Floors' floors are flawed. He anticipates a significant loss in earnings (as opposed to the forecasted eps of \$0.45 per share), with a concomitant 25% drop in the price of Floors' stock.

Issues: Scible wants to do several things: First, he wants to cash out 75% of his non-qualified deferred compensation and to switch his entire 401(k) account balance under the Floors Unlimited Retirement Savings Trust (the "FURST"), along with his non-qualified plan notional investments, out of Floors stock. Second, because he believes that Floors' current business problems stem, in part, from an "overabundance of caution and lack of new and creative thinking", Scible wants to "get rid of the old ladies" by amending the Floors Unlimited Pension Plan (the "FUPP") to include an "early retirement window" feature that will coincide with his upcoming request to "step up" to non-executive chairman of the board. Last, he wants to remove Floors' CFO T. Ruth Teller from the FURST fiduciary committee and the FUPP investment committee as soon as possible because she is demanding that the impending financial debacle be communicated to the FURST and FUPP participants (and Scible seeks advice from Jurise and Welkim as to the identity and selection of her successor, but he prefers a "young go-getter.") The FURST provides a 50% matching contribution on the first 6% of elective deferrals with the match either made directly in Floors stock or else mandatorily directed to a Floors' stock fund. Shares of Floors constitute 12% of the FURST assets and 4% of the FUPP assets.

Questions for Discussion:

1. Can Scible get his money from the non-qualified plan?
2. What should Jurise and Welkim be saying about the FUPP proposal?
3. Can Scible remove Teller? Should Jurise resist this? Is Teller correct or prudent in demanding disclosure?
4. What are the SOX issues?
5. Are there other securities law concerns?