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Via Electronic Submission

February 9, 2016

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-13-15
Release Nos. 33-9862 and 34-75344
Possible Revisions to Audit Committee Disclosures

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities, the Law and Accounting Committee and the Corporate Governance Committee (collectively, the "Committees") of the Business Law Section (the "Section") of the American Bar Association (the "ABA") in response to the requests for comment by the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") presented in the concept release referenced above (the "Concept Release"). As set forth in the Concept Release, the Commission has sought comments regarding audit committee reporting requirements, with a focus on the audit committee's reporting of its responsibilities with respect to its oversight of the independent auditor.

The comments set forth in this letter represent the views of the Committees only and have not been approved by the ABA's House of Delegates or Board of Governors, and, therefore, do not represent the official position of the ABA. In addition, these comments do not represent the official position of the Section.

Overview

We commend the Commission for its issuance of the Concept Release. The Concept Release adds to a dialogue about disclosures regarding the critical role and responsibilities of audit committees that has been on-going for several years. Our responses to the requests for comment to the extent that additional disclosure requirements are intended to influence audit committee behavior, we recognize that many registrants on a proactive basis, as ably categorized by various

organizations and discussed in various comment letters on the Concept Release. (The Center for Audit Quality and Audit Analytics recently issued the 2015 "Audit Committee Transparency Barometer," which reports a continuation of this trend in 2015.) In addition, to the extent that additional disclosure requirements are intended to influence audit committee behavior, we recognize that many constructive recent developments, such as the communication requirements for auditors set forth in the Public Company Accounting Oversight Board's (the "PCAOB's") Auditing Standard No. 16 ("AS") 16, "Communications with Audit Committees," and the PCAOB's Audit Committee Dialogue, are already helping to enhance the audit committee's oversight of the independent auditors.

We have three specific disclosure recommendations discussed below. Each is intended to be a principles-based requirement that is flexible enough for registrants to address investor demands for information based on their particular circumstances and to be consistent with the Commission's goal of its Disclosure Effectiveness Initiative, which is to "comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and shareholders' access to that information."¹

We believe that pursuing this straightforward, flexible approach is preferable to an approach that mandates the array of additional disclosures discussed in the Concept Release, which, we believe, could have unintended negative consequences. Our principal concerns are that adoption of rules that require the disclosures discussed in the Concept Release could chill communications between audit committees and auditors, an essential element of the effective tripartite relationship envisioned by the Sarbanes-Oxley Act of 2002 ("SOX"), and could detract from a thoughtful, tailored approach by the audit committee to its oversight responsibilities. In addition, we believe that many of the detailed disclosure requirements identified in the Concept Release (if proposed and adopted by the Commission) may mislead investors into believing that the particular disclosures enable them to assess the quality of audit committee oversight. Perhaps even more important is our view that the Commission's disclosure goal of enabling investors to compare audit quality across registrants is not achievable given the differences among registrants and the informational needs of their respective investors, as well as the complexities of registrants and their financial reporting processes and the related audits of financial statements and internal control over financial reporting. Finally, we believe that, separate and apart from the audit committee's oversight of the outside auditor (which we believe is the focus of the Concept Release), the audit committee's oversight of the registrant's internal control over financial reporting, the internal auditor, the performance of financial management and the whistleblower complaint process required by SOX, among other duties, are also critical to the quality of the registrant's financial reporting and might be inadvertently downplayed by the extensive disclosure recommendations in the Concept Release.

¹ See SEC Disclosure Effectiveness page: <https://www.sec.gov/spotlight/disclosure-effectiveness.shtml>.

Our three specific recommendations are the following:

- Amend Item 407(d)(3)(i) of Regulation S-K to delete the outdated reference to the “Statement on Auditing Standards No. 61” and require the audit committee to state whether or not the auditors have represented to the audit committee that they have reported to the audit committee all matters that they are required to report under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), SEC rules adopted thereunder, and PCAOB auditing standards;
- Amend Item 9(a) of Schedule 14A to require that any recommendation to the shareholders relating to the appointment of the auditors for the current year include a discussion of the reasons for the recommendation; and
- Amend Item 407(d)(1) of Regulation S-K to require, in addition to a statement as to whether or not the audit committee has a charter, a link to the audit committee’s charter and a brief description of the significant aspects of the audit committee’s processes for performing its functions required by the charter or otherwise.

Specific Recommendations

(1) Amend Item 407(d)(3)(i)(B) of Regulation S-K

We recommend that Item 407(d)(3)(i)(B) be amended to require the audit committee to state in the audit committee’s report whether or not the auditors have represented to the audit committee that they have reported to the audit committee all matters that they are required to report under the Exchange Act, applicable SEC rules adopted thereunder, and auditing standards adopted by the PCAOB. Not only is the requirement in Item 407(d)(3)(i)(B) that the audit committee’s report state whether the audit committee has discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61 (“AU 61”), as adopted by the PCAOB, outdated, as the Commission noted in the Concept Release, but there are other audit committee communication requirements. These other audit committee communications, which include the communications required by the SEC’s Rule 2-07 of Regulation S-X, may be equally important as the ones identified in the PCAOB’s AS 16, which superseded AU 61. In addition, since the issuance of AS 16, the PCAOB has included other required audit committee communications in AS 18, “Related Parties,” and may include additional audit committee communication requirements in future auditing standards. Furthermore, references to specific PCAOB auditing standards and SEC rules may become outdated over time. For example, on December 31, 2016, the PCAOB’s reorganization of the auditing standards, which the Commission approved on September 17, 2015, will become effective and will supersede the PCAOB’s current auditing standards with a different numbering system.

(2) Amend Item 9(a) of Schedule 14A

We recommend that Item 9(a) of Schedule 14A be amended to require a discussion of the reasons for any recommendation by a registrant's board of directors or audit committee that security holders vote "for the election, approval or ratification" of the registrant's auditor. We believe that this requirement would necessarily lead to a discussion of the material factors considered by the audit committee in determining to reappoint an incumbent auditor or to appoint a new auditor. We expect that a registrant may decide to include in such a discussion some of the factors raised in the Concept Release, such as, where material, the perceived effect of the auditor's tenure, the audit committee's views on the auditor's industry expertise, service quality, and cost, and an overview of the selection process. While we think that this disclosure may be more helpful to security holders if it is included in the discussion about the proposal for stockholder action related to the election, approval or ratification of a registrant's auditor, if the audit committee includes the disclosure in the audit committee's report, the registrant could include a cross reference to the audit committee's report in the discussion about the proposal to obviate the need for duplicative disclosure.

(3) Amend Item 407(d)(1) of Regulation S-K

We recommend that Item 407(d)(1) be amended to require, in addition to a statement as to whether or not the audit committee has a charter, a link to the audit committee's charter and a brief description of significant aspects of the audit committee's processes for performing its functions required by the charter or otherwise. In addition, in order to consolidate the disclosures about the audit committee's activities so that investors can easily find them, the Commission could consider a new instruction to Item 407(d)(1) in which it urges registrants to provide the disclosures about the audit committee in one place in the proxy statement or include cross references so that the disclosure can be found easily. We believe that a requirement for a brief description of the audit committee's processes for performing its functions should be principles-based and flexible enough for registrants to provide material information where appropriate in order to be responsive to investor requests for relevant information based on their particular circumstances.

Conclusion

We believe that our recommended disclosure requirements, which are predicated on a principles-based approach, rather than prescriptive rule-making by the Commission, would appropriately address the objective of enhancing the quality of disclosures about the audit committee without adversely affecting the continuing evolution of voluntary and tailored enhancements to the disclosures about audit committee activities. Prescriptive rules would likely lead to less meaningful disclosure than disclosures responsive to investor or market demands, and, as noted above, could adversely affect communications between audit committees and auditors and audit committee behavior. If the Commission believes that the current trend towards enhanced audit committee disclosures needs further momentum, the Commission

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could provide, in the form of a "Dear Audit Committee Chair" letter or other guidance, a discussion of the objectives of disclosures about audit committee activities.

We appreciate the opportunity to comment on the Concept Release, and respectfully request that the Commission and the Staff consider our recommendations and suggestions. We are available to meet and discuss these matters with the Commission and/or the Staff and to respond to any questions.

Very truly yours,

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